



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 23-02328
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esquire, Department Counsel
For Applicant: *Pro se*

12/12/2024

Decision

HOGAN, Erin C., Administrative Judge:

On November 2, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 7, 2024. The hearing was originally scheduled on September 17, 2024, but was continued. A Notice of Hearing was issued on September 30, 2024, scheduling the hearing on October 17, 2024. The hearing was held as scheduled, via video-teleconference. During the hearing, the Government offered five exhibits which were admitted as Government Exhibits (GE) 1–5 without objection. Applicant testified and offered two exhibits which were admitted as Applicant Exhibits (AE) A-B without objection. The record was held open until October 31, 2024, to allow Applicant to submit additional documents. He timely submitted a six-page document that was admitted as AE C without objection. The transcript (Tr.) was

received on October 28, 2024. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 38-year-old employee of a DOD contractor seeking a security clearance. He has worked for his current employer since June 2023. This is his first time applying for a security clearance. He has a high school diploma. He is married and has two sons, ages eight and five. His eight-year-old son lives with him and his five-year-old son lives with his mother in the state where she resides. (Tr. 17, 23-24; Gov 1)

The names of individuals, businesses, and institutions have been changed in this decision in the interests of protecting the Applicant's privacy. More detailed information is located in the case file.

Guideline F, Financial Considerations:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 20, 2023. A subsequent security clearance background investigation revealed the following delinquent debts: a \$10,427 delinquent credit union account that was placed for collection (SOR ¶ 1.a: GE 2 at 2; GE 3 at 2; GE 4 at 3); a \$430 delinquent credit card account that was placed for collection (SOR ¶ 1.b: GE 2 at 3; GE 4 at 3); a \$286 department store credit card account was charged off. (SOR ¶ 1.c: GE 2 at 3; GE 4 at 3); and a child support account that was past due in the approximate amount of \$4,928.15. (SOR ¶ 1.d: GE 1 at 53; GE 2 at 3, 22)

Applicant admits all of the allegations in the SOR. For several years, he worked for companies doing carpentry work outside. He was routinely laid off when the company had no work, and on days there was inclement weather he would be unable to work and would not be paid. His current position has a regular 40-hour work week (with overtime). The work is done inside so he is guaranteed a stable full-time schedule. The sporadic nature of his previous jobs caused financial stress. He was unable to keep up on his expenses to include child support during his periods of unemployment. (Tr. 20; GE 1 at 10-35)

Now that Applicant works in a reliable full-time position, he has been able to start resolving his debts. His wife currently does not work outside their home because she is completing college and will likely graduate in December 2024. His child support has been deducted from his paychecks since January 2019. Once he changed jobs in June 2023, it took some time for the new child support allotment to be taken out of his new employer's paycheck, but payments have started. (Tr. 16) The status of each debt is:

SOR ¶ 1.a: a \$10,427 credit union account placed for collection: Applicant entered into a payment plan with the law office that is currently collecting this debt. He made a \$2,000 down payment and agreed to pay \$200 monthly until the debt is resolved. From January 2024 to April 2024, he made a \$521 monthly payment for the

initial \$2,000. He has been timely paying \$200 a month since May 28, 2024. The law firm provided a payment history in a letter dated October 29, 2024. Applicant is timely paying on this payment agreement. (Tr. 25-29; AE C at 6)

SOR ¶ 1.b: a \$430 delinquent credit card account that was placed for collection. During the hearing, Applicant testified that he had paid this account a few months earlier. The record was held open to allow him to provide a receipt from the collection agency that was collecting on this debt. He provided proof of payment from the collection agency in an e-mail dated January 12, 2024. The debt is resolved. (Tr. 25-29; AE C at 4)

SOR ¶ 1.c: a \$286 charged-off department store account: Applicant was not sure of the status of the account, but he will pay the account when he is able to. In his response to DOHA interrogatories, he indicated he used the card when his youngest son was born for items that he needed. The card was sent to collections years ago and he forgot to follow up on it. (Tr.20-22; GE 2 at 7)

SOR ¶ 1.d: a \$4,928 past due child support account: Applicant provided proof that as of September 2024, the balance was reduced to \$3,940. He currently gets paid on a weekly basis. A child support payment of \$265.12 is taken out of his paycheck each week. In his previous job, \$291 was taken out each pay period. Applicant is not sure why the allotment was reduced. He testified that approximately one and half years ago, the child support balance was between \$9,000 to \$10,000. He has reduced the balance to just over \$3,900. His federal tax refunds are applied to the balance. He testified that he would have applied the tax refunds towards his child support anyway. He tries to make as many payments towards child support as he can afford. Documentation from the state child support enforcement system indicate that Applicant is making timely child support payments. He has paid off the arrears as of September 2024 and makes timely child support payments. This debt is resolved for Applicant because he is making timely payments towards his child support. (Tr. 22, 30-35; AE A; AE B at 10-15, 35-40; AE C at 2-3)

Applicant did not want to neglect his child support payments. His sporadic periods of unemployment prevented him from making regular payments due to insufficient funds. He does not have a good relationship with his son's mother. She does not allow him to see his son. She has primary custody, and the court only allows him to see his son two hours once a month. (Tr. 32-33)

Applicant testified that he generally meets his expenses. His monthly income is higher when he is able to work a lot of overtime. He no longer has any credit cards. He has not attended financial counseling. He is current on federal and state income taxes. His household income will increase in the coming year after his wife's college graduation and once she obtains employment. (Tr. 23-24, 35-37, 41)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

GUIDELINE F: Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

At the time the SOR was issued, Applicant had three delinquent accounts, for an approximate total of \$11,143 and a child support account that was past due in the amount of \$4,928. AG ¶¶ 19(a) and 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's case:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) applies because Applicant's prior employment was sporadic and dependent on the weather and workload. He encountered numerous periods of unemployment, which affected his ability to pay his expenses, debts, and child support. Frankly, it is amazing that he did not incur more delinquent debt. He has acted responsibly under the circumstances because he has focused on paying his child support and bringing it current. He resolved one debt (SOR ¶ 1.b) and entered into and is timely paying on a repayment plan with his largest debt, (SOR ¶ 1.a). His remaining debt is \$286 (SOR ¶ 1.c), and he intends to resolve it once the other debts are resolved.

AG ¶ 20(d) applies. Applicant is making a good-faith effort to repay overdue creditors and resolve debts. He has regularly paid his child support payments now that he has a more secure job. The child support balance has been reduced to \$3,940 from \$4,928. He testified the child support balance was between \$9,000 and \$10,000 about a year and a half ago. He has clearly made an effort to get caught up on his child support payments. He resolved one debt (SOR ¶ 1.b) and is on a payment plan and is making routine payments towards his largest debt. (SOR ¶ 1.a) He has one remaining \$286 debt which he will likely resolve when he can afford to do so. (SOR ¶ 1.c) He is doing the best he can within his means to resolve his delinquent debt and to bring his child support current.

The DOHA Appeal Board has held that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. (ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) (citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008))). Applicant has demonstrated that he has a plan to resolve his debts. He mitigated the security concerns raised under Financial Considerations.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine timely adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant started to work for his current employer in June 2023. I considered his ability to work in his previous job was contingent on the weather and whether there was work available. Through no fault of his own, he endured regular periods of unemployment when there was no work available or the weather conditions were unsuitable for working outside. He is now in a position that guarantees him a 40-hour work week plus overtime. He is able to resolve his delinquent debt and to bring his child support current. He has been proactive in resolving his financial situation. He proved that he is reliable and trustworthy. Security concerns under financial considerations are mitigated.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a -1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge