



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



In the matter of:)
)
) ISCR Case No. 22-01229
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel,
For Applicant: Samir Nakhleh, Esq.

11/27/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 21, 2022, 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 (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant submitted a response to the SOR (Answer) on October 18, 2022, and he requested a hearing before an administrative judge. The case was assigned to me on November 7, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on December 1, 2023, scheduling the matter for a hearing on January 5, 2024. On January 3, 2024, I granted Applicant's request for a continuance. DOHA issued another notice on January 11, 2024, rescheduling the matter for a video teleconference hearing on February 27, 2024. I convened the hearing as rescheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1 through 5 and Applicant Exhibits (AE) A through AA. Applicant testified and did not call any witnesses. Neither party requested to keep the record open and the record closed. DOHA received the hearing transcript (Tr.) on March 6, 2024.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations except for SOR ¶¶ 1.y and 1.z, which he denied. He is 39 years old, married, and he has a three-year-old daughter. He graduated from high school in 2004 and earned an associate degree in 2006. He subsequently attended two universities, the first from 2007 to 2011 and the second from 2013 to 2014, but he did not earn any additional degrees. As of the hearing date, he and his family have lived with and rented from his brother-in-law since November 2022. (Answer; Tr. 18-21, 53-54, 61, 63-64, 98-99; GE 1; AE Q-S)

Since June 2023, Applicant has worked as an audio visual and video teleconferencing engineer for his current employer, a defense contractor. He worked for various DOD companies beginning in approximately 2006, except for periods of unemployment from August 2007 to December 2007, August 2009 to November 2009, and July 2010 to February 2012. He also worked for various non-DOD companies between 2016 and 2021. He has also worked part time for several food delivery service companies between 2019 and 2021. He was granted a security clearance in approximately 2006. (Answer; Tr. 7-8, 22-27, 41-42, 49-50, 54-61; GE 1-2; AE S)

The SOR alleged Applicant was delinquent on two federal student loans placed in collection in the amounts of \$57,956 and \$33,324, respectively. (SOR ¶¶ 1.a-1.b) It also alleged he was delinquent on 22 medical debts totaling \$15,005: seven with CREDITOR A totaling \$7,250 (SOR ¶¶ 1.c, 1.f-1.k), two with CREDITOR B totaling \$2,134 (SOR ¶¶ 1.d-1.e), ten with CREDITOR C totaling \$4,955 (SOR ¶¶ 1.l-1.q, 1.s, 1.u-1.w), two with CREDITOR D totaling \$534 (SOR ¶¶ 1.r, 1.x), and one with CREDITOR E for \$132 (SOR ¶ 1.t). It also alleged he failed to file his federal and state income tax returns, as required, for tax years (TY) 2018 through 2021. (SOR ¶¶ 1.y-1.z) Applicant's delinquent debts are established by his admissions in his Answer, his January 2020 security clearance application (SCA), his October 2020 background interview, his August 2022 response to interrogatories, and credit bureau reports (CBR) from September 2020 and April 2022. (GE 1-4) No delinquent debts are reported on CBRs from December 2023 and February 2024. (GE 5; AE K)

Applicant obtained federal student loans to pay for his last semester in college in 2011 and for his college tuition in 2013. While his loans were deferred while he was in college, he acknowledged he had not made any payments toward them once he no longer attended college. His medical expenses, periods of unemployment, and minimal income, as further discussed below, affected his ability to repay his loans. He did not recall receiving payment notices from the U.S. Department of Education (ED). Documentation reflects he enrolled his defaulted loans in the ED's Fresh Start initiative in February 2024, and the most recent CBR from February 2024 corroborates that both of his student loans are no longer delinquent. He testified that although payments for his student loans had

not yet commenced under the initiative, he expected he would be required to begin repaying them by April 2024 and he and his spouse budgeted for estimated monthly payments of between \$300 and \$500. He intended to repay his student loans. (Answer; Tr. 21, 40-41, 53-54, 83-90, 106-108, 111-114; GE 1-2, 5; AE K, Z, AA)

Applicant's medical debts primarily stem from a chronic medical condition he has had since birth. During his periods of unemployment, as previously discussed, he did not have medical insurance. He incurred additional medical expenses related to the birth of his daughter in 2021. His spouse took a leave of absence from her job as a high-school teacher, where she earned approximately \$40,000 to \$43,000 annually, so she could care for their child. When she began working again, as a virtual teacher after the COVID-19 pandemic, she suffered a pay cut and has since earned approximately \$35,000 annually. (Answer; Tr. 22, 34-53, 55-68, 87-90, 94-95, 100-101, 106-107; GE 1-2; AE D-F, Q)

In June 2021, Applicant was the victim in a head-on car accident and hired an attorney to pursue damages against the other driver. He incurred further medical expenses for physical therapy for injuries related to the car accident. Since his car was damaged and his spouse's car was inoperable due to a transmission issue, both of which had been fully paid, he acquired a car payment of approximately \$300 monthly when he purchased a car in November 2021. He attempted to refinance his car loan but elected not to since doing so would only save him \$22. He also hired another attorney to pursue the issue with his spouse's car, as it was supposed to be covered under warranty. He also placed his family on his medical insurance at a cost of \$800 monthly. He stated he recently paid the medical debts associated with his spouse's birth of their daughter. He intends to utilize the settlement from the car accident, which his attorney was finalizing, to resolve his debts. (Answer; Tr. 22, 34-53, 55-68, 87-90, 94-95, 100-101, 106-107, 114-115; GE 1-2; AE D-F, Q)

Applicant testified he negotiated a payment arrangement to resolve his medical debts with CREDITOR A and CREDITOR B. He provided documentation reflecting a payment plan consisting of a one-time payment of \$25 in February 2024, 13 monthly payments of \$50 from March 2024 to April 2025, and a one-time payment of \$43 in May 2025, to resolve medical debt totaling \$718. (AE B) He testified he made one monthly payment of \$50, but he did not provide proof of any payments made in accordance with his payment plan. (Tr. 34-40, 92-93, 113-114)

Applicant testified he contacted CREDITOR C in early February 2024 and he was in the process of making a monthly payment arrangement of \$25 to resolve his medical debts, which included three additional emergency-room-related medical debts he incurred between November 2022 and November 2023 in the amounts of \$242, \$616, and \$506. (AE C) He testified he unsuccessfully attempted to locate CREDITOR D and CREDITOR E in January 2024, and he intended to pay his medical debts with these creditors once he was able to locate them. He did not provide documentation of a payment arrangement or proof of any payments towards his medical debts with CREDITOR C, or of his efforts to locate CREDITOR D and CREDITOR E. (Tr. 34-40, 91-92, 113-114)

Applicant provided proof that he made a \$41 payment in February 2024 toward a medical bill not alleged in the SOR. (AE T) He also provided documentation reflecting a payment plan, consisting of a one-time payment in February 2024 and 7 monthly payments of \$22 from March 2024 to September 2024, to resolve another medical debt not alleged in the SOR. (AE U) He intends to tackle all his medical debts as he has the financial means to do so. (Tr. 34-40, 113-114)

Applicant stated he had not filed his income tax returns since TY 2018 because he fell behind after mistakenly believing that his friend, who had helped him complete his income tax returns for that tax year, had filed them. He did not learn until TY 2019 that his friend had only requested an extension to file his TY 2018 income tax returns. He hired a tax professional in approximately late 2021, at a cost of approximately \$300 per income tax return, to file his income tax returns. When he had saved enough money by the end of 2023 to pay the tax professional, he had to utilize \$3,400 to pay for his attorney to represent him at his security clearance hearing. He intended to file his relevant income tax returns once he saved enough money to pay the tax professional and he also intended to timely file his future income tax returns, as required. (Answer; Tr. 31-34, 68-83, 94, 99-107, 109-111; GE 2; AE G-J, V-Y)

Tax documentation reflects Applicant filed his federal and state income tax return for TY 2018 in April 2022, and he owes \$1,513 in federal taxes and \$248 in state taxes for that tax year. He filed his federal income tax return for TY 2019 in January 2023, and he was due a \$757 federal refund for that tax year. He filed his state income tax returns for TYs 2019, 2020, 2021, and 2022 in December 2023, he was due a \$181 state refund for TY 2019, and he owes \$1,071, \$1,645, and \$1,457 in state taxes for TYs 2020, 2021, and 2022, respectively. (Answer; Tr. 31-34, 68-83; GE 2; AE G-J, V-Y)

As of February 2024, Applicant was working with the tax professional to complete and file his federal income tax returns for TYs 2020, 2021, and 2022. He did not provide documentation reflecting he filed his federal income tax returns for those tax years, that he paid his outstanding federal and state taxes for TY 2018, or that he paid his outstanding state taxes for TYs 2020, 2021, and 2022. As Applicant's unfiled federal income tax return for TY 2022 and his unpaid taxes were not alleged in the SOR, they may not be an independent basis for denying his clearance application. However, I will consider them for the limited purpose of evaluating his evidence of extenuation, mitigation, or changed circumstances; deciding whether a particular provision of the Adjudicative Guidelines is applicable; and analyzing any whole person evidence. (Answer; Tr. 31-34, 68-83, 99-107, 109-111; GE 2; AE G-J, V-Y)

As of the date of the hearing and since June 2023, Applicant's annual salary was approximately \$76,000. He earned approximately \$48,000 annually from 2018 to 2023. He supplemented his income with various part time jobs between 2016 and 2021, as previously discussed, in which he earned an annual salary of approximately \$2,000 to \$14,000. He stated he and his spouse have developed a budget, which included monthly payments toward his rent and car. After monthly expenses, he estimated their monthly net remainder was \$1,500, and he intended to utilize it to pay his student loans, medical debt, and outstanding taxes. He stated his financial situation was improving. He received

financial counseling from a debt consolidation company in early February 2024. (Tr. 41, 51-53, 55-67, 89-91, 94-99, 108-109, 114-115)

Character references, to include Applicant's pastor, deacon, fellow church member, friend and former church member, and coworker attested to his honesty, reliability, trustworthiness, and good judgment. In a January 2024 letter, his supervisor since June 2023 described him as one of his most trustworthy and dedicated employees. (Tr. 27-30; AE A, L-P)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of "compromise of classified information. Section 7 of Exec. Or. 10865 provides that adverse 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 Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern 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 . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of not being able to pay his debts. He also failed to file his relevant federal and state income tax returns, as required. AG ¶¶ 19(a), 19(c), and 19(f) are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Conditions beyond Applicant's control, including a head-on car accident and related medical expenses, contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He enrolled his defaulted student loans in the ED's Fresh Start initiative in February 2024, and the most recent CBR reflects that his loans are no longer delinquent. When payments commence under the initiative, he has allotted between \$300 and \$500 of his monthly net remainder to repay his student loans. He also filed his federal and state income tax return for TY 2018 in April 2022, he filed his federal income tax return for TY 2019 in January 2023, and he filed his state income tax returns for TYs 2019, 2020, 2021, and 2022 in December 2023. As such, I find SOR ¶¶ 1.a, 1.b, and 1.z in his favor, and I also find SOR ¶ 1.y, in part, in his favor.

Applicant has not submitted evidence of responsible conduct for his remaining financial issues. He did not submit proof of payments toward his medical debts alleged in the SOR or of his efforts to locate two of his medical creditors. He did not provide documentation reflecting he filed his federal income tax returns for TYs 2020, 2021, and 2022, that he paid his outstanding federal and state taxes for TY 2018, or that he paid his outstanding state taxes for TYs 2020, 2021, and 2022.

Although Applicant has received financial counseling and his monthly net remainder reflects that he has the financial means to pay his medical debts and his outstanding taxes, he needs more time to establish he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e) and 20(g) do not apply to SOR ¶¶ 1.c-1.x or, in part, to SOR ¶ 1.y.

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 relevant circumstances. The administrative judge should consider the nine 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 have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c-1.x:	Against Applicant
Subparagraph 1.y	For Applicant, in part (filed federal income tax returns for tax years 2018 and 2019), and Against Applicant, in part (failure to file federal income tax returns for tax years 2020 and 2021)
Subparagraph 1.z:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge