



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



In the matter of:

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ISCR Case No. 24-00110

Applicant for Security Clearance

Appearances

For Government: William Miller, Esq., Department Counsel

For Applicant: *Pro se*

11/04/2024

Decision

BENSON, Pamela, Administrative Judge:

Applicant mitigated the financial considerations security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On July 13, 2022, Applicant completed and signed a Questionnaires for Investigations Processing or security clearance application (SCA). On February 1, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; *Department of Defense* (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; as amended, and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F (financial

considerations). On February 14, 2024, Applicant responded to the SOR and requested a hearing.

On July 12, 2024, DOHA issued a notice of hearing, setting the hearing for July 26, 2024. The Microsoft Teams teleconference hearing was held as scheduled. During the hearing, Department Counsel offered nine Government exhibits (GE) 1-9; Applicant offered nine exhibits (AE) A-I; there were no objections; and all proffered exhibits were admitted into evidence. On August 2, 2024, DOHA received a transcript (Tr.) of the hearing.

Findings of Fact

In Applicant's February 2024 SOR response, he admitted, with clarification, all of the SOR allegations under Guideline F. (SOR ¶¶ 1.a-1.e.) He also provided supporting documentation. His admissions are accepted as a finding of fact. (SOR response)

Applicant is 43 years old. He earned a bachelor's degree in 2010. He married in 2013 and was divorced in 2020. He has two minor children. He is court-ordered to pay monthly child support in the amount of \$360, but he actually pays \$460. Since August 2022 he has been employed full-time by a federal contractor as a senior analyst. He earns an annual base salary of approximately \$94,000. This is Applicant's first application for a DOD security clearance. (SOR response; Tr. 22-28, 56; GE 1)

Financial Considerations

The SOR cites five financial allegations totaling approximately \$46,000. Applicant stated this debt was incurred initially due to buying a home in 2014, and then making substantial home repairs. When he started going through a divorce, his finances worsened, and was also compounded by the failure of his small business, a "hobby shop", that he eventually closed in November 2023. Applicant had used any available financial resources, to include withdrawals from his 401k, for his business inventory, expenses, and to ensure his employees were paid, even during the COVID-19 pandemic. He also had to pay additional taxes for his 401k withdrawals. In 2019, Applicant enrolled some of his delinquent accounts into a consumer debt relief program, but in 2023, he canceled his contract with the company. He did not resume payments to his delinquent creditors until just recently. The status of these allegations are as follows: (SOR response; Tr. 25, 29, 50, 54, 59)

Applicant retained the consumer debt relief company (CDR company) to help him with his delinquent debt, and beginning in April 2019, he was making monthly payments of \$308. In January 2021, the CDR company increased his monthly payments to \$557. In January 2023, he terminated his contract with the CDR company because he did not believe he was making much progress with his enrolled debts. The CDR company was paying each creditor about \$25 out of his monthly payment. Applicant decided he could do better by actually paying the creditors himself. (Tr. 29-30)

SOR ¶ 1.a alleges Applicant is indebted on a credit card account that was subsequently charged off in the amount of \$6,197. Applicant admitted that payments to this creditor stopped when he terminated his CDR company in January 2023. He has not initiated contact with the creditor following this event because it is his intention to fully resolve his other debts before he resumes payments on this delinquent account. Although this account is unresolved, it is Applicant's intention to start payments when he has the financial means to do so. (SOR response; Tr. 31-32, 40-41; GE 8, GE 9)

SOR ¶ 1.b alleges Applicant is indebted to a bank for an account that was used for home improvements and was subsequently placed for collection in the amount of \$3,612. Applicant provided documentation that in April 2024 he paid this account in full. This debt is resolved. (Tr. 32-35; GE 8; AE D)

SOR ¶ 1.c alleges Applicant is indebted to a bank for an account placed for collection in the amount of \$14,933. This account was originally placed with the CDR company but starting in February 2024, he entered into a repayment plan where he agreed to pay \$253 a month over 59 months. Applicant provided documentation that he is current with his payment plan and this debt is in the process of being resolved. (SOR response; Tr. 36-39; GE 9; AE B)

SOR ¶ 1.d alleges Applicant is indebted on a credit card account that was subsequently charged off in the amount of \$15,116. Applicant admitted that payments to this creditor stopped when he terminated his CDR company in January 2023. He has not initiated contact with the creditor following this event because it is his intention to fully resolve his other debts before he resumes payments on this delinquent account. Although this account is unresolved, it is Applicant's intention to start payments when he has the financial means to do so. (Tr. 39-41 GE 7)

SOR ¶ 1.e alleges Applicant is indebted on a loan account that was subsequently charged off in the amount of \$6,101. Applicant arranged a payment plan with the creditor and since February 2024, he has been making weekly payments of \$42.37. His supporting documentation showed that he has made 21 timely payments to date. Applicant is in the process of resolving this debt. (Tr. 41-42; GE 6; AE C)

After Applicant closed his failing business in November 2023, he had additional money that he was able to use to pay his delinquent debts. He stated that he is currently financially stable, and he is committed to cleaning up his financial issues. He stated that he generally uses cash only to make purchases, and he lives a frugal lifestyle. He is current on his taxes. (Tr. 50-61)

Applicant submitted an employee 2024 performance evaluation. The evaluation noted that "[Applicant] has collaborated extensively with the team, showcasing strong leadership and making notable contributions to various projects. His proactive approach in taking project leadership has facilitated effective knowledge transfer, especially in guiding teammates through unfamiliar aspects of code and data structure." The report overall described Applicant's positive influence in the workplace and his strong commitment to the mission. (AE I)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it

is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F: Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

Applicant’s admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

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

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

The five SOR debts totaling approximately \$46,000 were generated after Applicant bought a home in 2014 which required extensive home repairs. He married and had two children within a couple years, and he started a business in late 2018 that did not generate noteworthy income. He used all his financial resources to keep his business in operation, however he eventually closed his hobby shop in November 2023. He also went through a divorce which contributed to his mounting debt. Some of these conditions that resulted in the financial problems were largely beyond his control. To receive the full mitigating credit of AG ¶ 20, however; Applicant must also demonstrate that he has acted responsibly under the circumstances to address his delinquent debt.

Applicant retained the services of a CDR company in 2019, which is a responsible action to deal with his delinquent debt. He continued making payments to this company until January 2023, when he realized that very little money from his monthly payment was going to his creditors. He decided that he would make better progress by setting up payment plans directly with the creditors himself. He has a steady history of making timely payments in accordance with the terms of both repayment plans that are in effect.

Applicant provided documentation that out of the five debts, he paid one, and he is current on payment plans with two other accounts. There are two debts that were paid while he was enrolled in the CDR company, but since he terminated the program in January 2023, they are not currently being resolved. Applicant was very candid and sincere about his plans to resolve these other two SOR accounts once he has resolved the two accounts he is currently paying. He lives a frugal life, and he has not developed any new debts. He is willing and able to live within his means, which is reflected in the testimonial and documentary evidence. His noticeable efforts and willingness to satisfy all of his delinquent debt demonstrates his responsibility and good judgment. AG ¶¶ 20(a), 20 (b), and 20(d) are applicable. Applicant established mitigation of the financial considerations security concerns.

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 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant took responsible action in dealing with his creditors due to some circumstances that were beyond his control. Applicant hired a CDR company in 2019 to assist him with his financial problems. After he closed his failing business in late 2023 and up to the present time, he has been making efforts to resolve his financial delinquencies. His employer praised his strong work ethic and finds him to be wholly committed to the work mission. Applicant is committed to keeping his financial affairs in order, and I find that future financial problems are unlikely to recur. He has provided sufficient documentation in the record to support his efforts. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

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.e:	For Applicant

Conclusion

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

Pamela Benson
Administrative Judge