



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



In the matter of:)	
)	
)	ISCR Case No. 22-02605
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his history of financial problems. Clearance is granted.

Statement of the Case

On January 5, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. In an undated answer, Applicant answered the SOR admitting all the allegations and requested a hearing, whereupon the case was assigned to me on July 18, 2023. On December 14, 2023, DOHA issued a notice of video teleconference hearing, scheduling the hearing on January 4, 2024. The hearing was held as scheduled. At the hearing, I

considered the testimony of Applicant and his wife, together with nine Government Exhibits (GE), incorporated into the record as GE 1 through GE 9. At the end of the hearing, I extended the record at Applicant's request to January 12, 2024, to allow him the opportunity to submit exhibits. After another extension, I admitted, without objection, ten exhibits incorporated into the record as Applicant's Exhibits (AE) A through J. After I received the exhibits, I prepared an exhibit list that I e-mailed to the parties and identified as Hearing Exhibit I. Neither side objected, and I incorporated the exhibit list into the record. The transcript (Tr.) was received on January 12, 2024.

Findings of Fact

Applicant is a 41-year-old married man with two children, ages three and five. He is a high school graduate and has taken some college courses. (Tr. 18) Since 2022, he has been working for a defense contractor as a carpenter. According to a coworker, he is a "hard-working, knowledgeable, and very responsible employee." (AE H)

Since 2017, Applicant has incurred approximately \$28,000 of delinquent debt, as alleged in the SOR. He attributes these financial problems to purchasing a house in 2017, which, in retrospect, was too expensive, and to failing to budget properly. (Tr. 41, 46) Subsequently, he began opening credit cards. (GE 4 at 10) In 2019, Applicant and his wife relocated to another area of the country with a cheaper cost of living in hopes of stabilizing their finances. (GE 1 at 10; GE 4 at 10) Shortly after moving, however, Applicant's wife discovered that she was pregnant with their second child. (Tr. 45) Unlike where they had moved from, they had no support network to help with childcare. Moreover, Applicant was unable to find employment when he moved, and did not work for the first four months after moving until he started a construction company. (GE 1 at 15) After starting his business, Applicant continued to struggle financially because it was impacted adversely by the COVID quarantine. (Tr. 21; GE 4 at 11). Successive misfortunes after relocating included a health scare which his wife experienced and a conflict with a landlord where Applicant moved after he relocated from his father's house, which prompted Applicant to leave before the expiration of the lease. (GE 4 at 12-13) In sum, although the cost of living was cheaper where Applicant relocated, any savings proved to be nominal after the baby was born. (GE 4 at 11)

In October 2021, Applicant and his family moved back to the state where they had lived in 2019. (GE 1 at 7) Applicant took a job with his current employer. Since returning, his salary has increased by approximately 30 percent. (Tr. 28) Moreover, Applicant's wife, who was unemployed when they returned, is now working full-time and contributing to the family's financial management. (Tr. 14) Applicant's job stability and residential stability have enabled him to begin addressing his delinquent SOR debts.

In June 2022, Applicant retained a debt repayment company to assist him. (Answer at 2) Between June 2022 and November 2022, he made approximately \$1,240 to the debt management company for it to transfer the money to the creditors. (Answer at 2-4) Applicant terminated the service because he was dissatisfied with their efforts at contacting

the creditors. (Tr. 36) Applicant then began making arrangements to pay the debts without any professional assistance.

Subparagraph 1.a is a state tax delinquency totaling \$7,279 for tax year 2020. On December 23, 2023, Applicant paid \$563 and initiated a payment plan. Under the plan, Applicant agreed to pay \$3,526 by January 13, 2024, and \$100 each month from March 2024 to December 2027. (AE A) As agreed, he made the \$3,526 payment on time.

Subparagraph 1.b is a credit card totaling \$7,883. Applicant has been satisfying this debt through \$115 monthly payments since August 2023. (AE B) As of January 2024, the balance was \$6,536. (AE B at 2)

Subparagraph 1.c is the early termination fee totaling \$5,532, that Applicant incurred when he broke the lease of the apartment he lived in shortly before returning to the state where he is living currently. Applicant moved early because of several health and safety issues, including unsanitary living conditions and a dangerous dog on the premises that attempted to bite his toddler. (Answer at 1; Tr. 22) Applicant disagrees with the amount due and recently wrote the landlord, requesting proof that the amount of the debt is accurate. (AE J at 1; Tr. 23-24) Once he hears from the landlord, he will either settle the debt or pursue litigation. (Tr. 23-24)

Subparagraph 1.d is a credit card debt, totaling approximately \$4,132. In March 2024, Applicant settled this debt with a lump-sum payment of \$2,754. (AE C) Subparagraph 1.e is a credit card debt, totaling approximately \$1,874. Applicant satisfied this debt with a payment of \$1,057 in February 2024. (AE D at 2) Subparagraph 1.f is a credit card debt totaling approximately \$949. Applicant settled this account in full in January 2024. (AE E) The debt alleged in subparagraph 1.g, totaling \$485 is a medical bill. Applicant satisfied this debt. (AE J at 2) He was unable to obtain documentary confirmation from the creditor. (AE J at 2) The debt alleged in subparagraph 1.h is a credit card, totaling \$371. Applicant began making monthly payments, totaling \$106.55 in August 2023. As of January 2024, the balance was \$51.78. (AE F) The debt alleged in subparagraph 1.i is a utility bill, totaling \$141. Applicant satisfied this debt in September 2022. (Answer at 7)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18)

Over the years, Applicant incurred approximately \$28,000 of delinquent debt. Approximately \$7,299 of this debt constitutes state income tax delinquencies. Under these circumstances, AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting’s financial obligations,” and AG ¶ 19(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,” applies.

The following mitigating conditions under AG ¶ 20 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Applicant’s financial problems began in 2017 after he purchased a home which was, in retrospect, too expensive. He and his wife wisely decided to sell it and move to a part of the country with a lower cost of living. However, after moving Applicant experienced successive circumstances beyond his control, including an unplanned pregnancy, a health scare, a four-month period of unemployment, and a business that failed because of the COVID quarantine. In response, Applicant and his family moved back to the city from which they had lived previously. After obtaining his current job, Applicant began addressing his debts. Since then, he has satisfied the debts alleged in subparagraphs 1.d through 1.g, and 1.i, and has paid all but a nominal amount of subparagraph 1.h, and he is making monthly payments towards the satisfaction of the debt alleged in subparagraph 1.b. As for the state tax delinquency, alleged in subparagraph 1.a, he has reached out to the state taxing authority and negotiated a settlement arrangement, which he initiated with an initial \$563 payment, a second large payment, and a payment plan.

Applicant recently received a significant raise. Furthermore, his wife is now working full-time. Given the cause of Applicant’s financial problems, the responsible steps he has taken to satisfy them, and his improved financial situation, I conclude that all of the mitigating conditions, set forth above, apply.

In reaching this conclusion, I am cognizant of the fact that the debt alleged in subparagraph 1.c, totaling \$5,532, remains unresolved. Given Applicant’s responsible resolution of the other debts, I conclude that his promise to resolve this debt is credible. In sum, I conclude Applicant has mitigated the financial considerations security concerns.

Whole-Person Concept

Applicant's financial problems were not caused by foolish or profligate overspending. Instead, they were caused by circumstances largely beyond his control. Applicant has eliminated a significant amount of his delinquent debt, and his improved financial condition makes it unlikely that these problems will continue or recur. Under these circumstances, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge