



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



In the matter of:)
)
) ISCR Case No. 23-02078
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro Se*

05/03/2024

Decision

Curry, Marc E., Administrative Judge

Applicant is making concrete, good-faith efforts to satisfy his delinquent debts. Under these circumstances, I conclude he mitigated the financial considerations security concerns.

Statement of the Case

On September 25, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing 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 CAS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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. On October 9, 2023, Applicant answered the SOR. He admitted all the allegations and requested a decision based on the evidence on file rather than a hearing. On October 24, 2023, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance-worthiness. The FORM contained six attachments, identified as Item 1 through Item 6.

Applicant received a copy of the FORM on November 27, 2023. He was given 30 days to reply. He filed a Reply on December 3, 2023, and the case was assigned to me on February 2, 2024.

On April 25, 2024, Applicant moved to reopen the record to include five additional exhibits. (Item 7) Department Counsel did not object, and instead, asked for an opportunity to respond to Applicant's motion. (Item 8) That day, I granted Applicant's motion, and extended the record for both Applicant and Department Counsel through April 29, 2024. I have identified the remaining correspondence from April 25, 2024, and April 29, 2024, between me and the parties as Items 9 through 15, and the additional exhibits as Items 16 through 23.

Findings of Fact

Applicant is a 26-year-old single man. He has been serving in the National Guard since 2020, and he works in his civilian capacity as a security guard. He graduated from college *summa cum laude* in January 2023 with a degree in business administration. (Reply at 3; Item 23 at 2) He has been living with his significant other since 2021.

When Applicant was in his late teens and early twenties, he incurred nine delinquent debts, totaling approximately \$43,400, as set forth in the SOR. (Items 5 and 6) He characterizes himself at that time as "an irresponsible and overall bad kid," (Item 2 at 3) His financial literacy has improved as he matured and advanced through college. He now works with a financial counselor who has "empowered [him] to make informed financial decisions." (Reply at 5) Applicant is now working on satisfying his debts, as follows:

Subparagraph 1.a, totaling \$10,115, is for a delinquent car lease. (Item 4 at 4) Applicant became overwhelmed with this debt after his then girlfriend took the car without his consent and totaled it. Subsequently, he could not afford to repair it, and the lease payments became delinquent. (Item 4 at 4; Reply at 3) Applicant entered into a settlement agreement with the creditor in March 2024. Since then, he has been making \$50 monthly payments per the agreement. (Item 16)

Subparagraph 1.b, totaling \$5,874, is owed to a department store. Per a settlement, Applicant has been making \$98 monthly payments since March 2024. (Item 17)

Applicant owes the debt alleged in SOR subparagraph 1.c., totaling \$2,463, to a credit card company. He settled it for an amount less than the full balance. (Item 18)

The debt alleged in subparagraph 1.d, totaling \$1,352, is owed to the collection agency for a credit card company. As of October 2023, Applicant was involved in settlement negotiations with the creditor. (Item 2 at 2) Ultimately, the creditor agreed to the reduced amount of \$338, which Applicant paid in March 2024. (Item 19)

SOR subparagraph 1.e is a credit card debt totaling \$698. Applicant paid the creditor \$162 in March 2024. (Item 20) Per the creditor, the balance is \$535.

SOR subparagraphs 1.f through 1.h are miscellaneous debts, totaling approximately \$1,200. Applicant contends that he settled and paid the debts alleged in subparagraphs 1.f and 1.g and is working on settling the debt alleged in subparagraph 1.h. (Item 2 at 2) Applicant's contention is supported by documentary evidence for the debt alleged in subparagraph 1.g (Item 21), but not for subparagraphs 1.f and 1.h.

The debt alleged in SOR subparagraph 1.i is a \$21,732 loan that Applicant used to finance the purchase of a used car in 2017 when he was 18 years old. (Item 4 at 5) Shortly after its purchase, the engine died. Applicant took the car to a mechanic but could not afford to fix it. Subsequently, the loan became delinquent. Per the creditor, Applicant settled this debt in full by April 30, 2022. (Item 22) He made the payment with extra money generated by working overtime. (Item 22)

Through 2021, Applicant earned, on average, \$13 per hour. (Item 15) In 2022, his pay increased to \$16 per hour. Since then, he has been promoted to supervisor and his salary increased to \$23 per hour. (Item 15)

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) Applicant's multiple delinquent debts trigger the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable under AG ¶ 20:

- (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.

Applicant readily admits that he was irresponsible. Therefore, AG ¶ 20(b) does not apply, since the debts did not occur for reasons beyond his control.

Applicant was in his late teens and early twenties when he incurred these delinquencies. Since then, he has settled and satisfied four of the debts, totaling more

than half of the outstanding debt, including the largest one, as alleged in subparagraph 1.f. He did so with the help of a financial counselor. These steps constitute clear indications that the problem is being resolved or is under control. AG ¶¶ 20(c) and 20(d) apply. In sum, I conclude that Applicant mitigated the financial considerations security concerns.

Whole-Person Concept

Applicant's evidence of maturity was particularly significant. Specifically, not only did he develop payment plans and make significant progress in debt elimination since incurring the debt; he joined the National Guard, and he graduated from college *summa cum laude*, as well. Considering this case in the context of the whole-person concept, I conclude Applicant 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

In light of all of 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