



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



In the matter of:)	
)	
)	ISCR Case No. 23-01341
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark Lawton, Esquire, Department Counsel
For Applicant: *Pro Se*

05/10/2024

Decision

HOGAN, Erin C., Administrative Judge

On June 30, 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.

On July 22, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2024. A Notice of Hearing was issued on February 15, 2024, scheduling the hearing on March 12, 2024. The hearing was held as scheduled, via video-conference. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (GE) 1-6 without objection. Applicant testified and offered six exhibits which were admitted as Applicant Exhibits (AE) A - F without objection. The record was held open until April 16, 2023, to allow Applicant to submit additional documents. He timely submitted a document which was marked as AE G and admitted without objection. The transcript (Tr.) was received on May 3, 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 39-year-old employee of a DOD contractor seeking to maintain a security clearance. He has worked for his current employer since November 2022. Since September 2010, he has served in the United States Air Force Reserve. He was recently promoted to the rank of Technical Sergeant. He earned a General Equivalency Degree (GED) in 2004 and has some college credit. He currently holds a Secret clearance. He married two years ago and has two children from a prior relationship, a 12-year-old daughter and a ten-year-old son. (Tr. 33-35, 58; Gov 1; AE C; AE D)

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:

In his answer to the SOR, Applicant admits the sole allegation in SOR ¶ 1.a.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 9, 2023. In response to Section 26, Financial Record, Applicant answered, "Yes" in response to whether he had delinquent accounts, charged-off account, or delinquent accounts that were placed for collection. He listed a loan he took out with a roofing company that was charged-off in the amount of \$31,155. (SOR ¶ 1.a: GE 1 at 36-37; GE 2 at 2; GE 3 at 1; GE 4 at 2; GE 5 at 6; GE 6 at 9)

In 2017, Applicant bought a house. It was an older house and required several improvements. Applicant made improvements to the house. The house appreciated in value and as did his tax assessment. In 2018, he got a part-time job in the evenings to pay for the added expenses related to the house. Shortly before his deployment overseas in the Spring 2019, he hired a roofing company to replace the roof and add gutters to the house. He took out a \$30,000 loan with the roofing company in order to pay for the new roof and gutters. His monthly payments were between \$400 and \$500 a month. The roofing company sold the loan to the current creditor alleged in SOR ¶ 1.a who shall be referred to as Creditor A. (Tr. 19-20, 28, 36-38)

Applicant continued to make payments to Creditor A. Before deploying, he attempted to have the interest rate reduced on the roofing debt while he was deployed in accordance with the Servicemembers Civil Relief Act (SCRA). The creditor denied his request for reasons unknown. His deployment lasted about four months. (Tr. 38-39, 41, 49-50; GE 2 at 11-23) About two months into his deployment, he stopped making payments to Creditor A because he did not have the money. His priority was to pay his attorney's fees, child support and daycare as discussed below. The debt was charged-off as a bad debt on June 30, 2021. (Tr. 39-41)

About two months into his deployment, the mother of his two children started legal action against him for custody and child support. They previously lived together but had been separated for years. Applicant had provided support directly to the mother of his children and not through legal channels. He had to hire an attorney to represent his interests. The mother of his children has continuously filed actions against him related to

custody and child support. She also raised false allegations of abuse, which he had to fight in court. He incurred a lot of legal costs. (Tr. 21, 23, AE A; GE 2 at 26-28)

Applicant's income was reduced when he deployed because he was unable to work his part-time job. His reserve income may also have been lower than what he was paid by his full-time job. (Tr. 21-23, 28)

When he returned from deployment, a judge advised him that if he wanted to share custody of his children, he needed to live in the county where the children lived and where the child custody and support cases were being litigated. His children lived about one hour away from where Applicant resided. He decided to rent an apartment in the county where his children resided. He still had the mortgage payment on the house he purchased. His finances were further reduced when he had to quit his part-time job because he believed he needed to be home for the children. (Tr. 21-23, 41)

In May 2023, Applicant sold his home for \$242,000. He made a \$40,000 profit. He did not apply any of the money towards the delinquent roofing loan. He applied the money towards other credit cards and debts. (Tr. 53)

Applicant admits Creditor A contacted him several times about the loan. He did not make payments. He was under the mistaken impression that once the loan was charged-off, he was no longer responsible for the account. Shortly after the SOR was issued in June 2023, he contacted the creditor through their on-line portal. He claims they never returned his inquiry. (Tr. 42-46)

In a response to a DOHA Interrogatory in May 2023, Applicant provided a personal financial statement. His net monthly income was \$6,265. He also earned approximately \$250 from his reserve duty. His wife's net salary was \$3,952. Their total net monthly income was \$10,217. The net monthly expenses were \$5,793. His net monthly expenses included \$1,021 for child support and daycare. His total monthly debt payments were \$1,309. He and his wife had a net remainder of \$3,115 monthly. (GE 2 at 7) The Personal Financial Statement did not include the legal expenses related to the child custody and support issues. Applicant did provide billing statements from his lawyer's office which shows that between November 2021 and February 2024, he spent approximately \$24,500 in legal fees. (AE A) For the month of April 2023, his legal bill was \$14,414. (GE 2 at 26-28).

During the hearing, Applicant indicated that he would attempt to settle the debt alleged in SOR ¶ 1.a. His income has increased and he is able to afford his household expenses and budget. (Tr. 47-48) He currently earns \$106,000 annually at his full-time job. He earns approximately \$8,000 annually as a reservist. His wife earns about \$70,000. His monthly child support payment is \$712. His children are older and they no longer need daycare. He is able to pay his debts. His wife is good at accounting and makes sures all bills are paid. (Tr. 58-59) The record was held open one month to give Applicant to the opportunity to settle the debt. He timely provided documentation that he settled the debt alleged in SOR ¶ 1.a for \$12,461.97 on April 5, 2024. (AE G) The debt is resolved.

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 a \$31,155 delinquent loan that was charged-off. 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)

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:

- (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; and

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

AG ¶ 20(a) applies. While Applicant admitted this was his debt, he sincerely believed he did not have to pay it because it was charged-off. He did not appear to realize his responsibility until he was at the hearing. He successfully negotiated a settlement after the hearing. His financial situation was complicated by his former partner's filing of child custody petitions related to their two children. He was focused on the needs of his children and was required to spend a lot on legal fees. Things have stabilized and his financial issues are unlikely to recur.

AG ¶ 20(b) partially applies because Applicant encountered reduced income when he was advised to quit his part-time job to spend time with his children during the lengthy custody battle with his children's mother. He also incurred over \$38,000 in legal bills related to child support and custody issues. These were conditions beyond his control. However, this mitigating condition is given less weight because he did not act responsibly under the circumstances after he sold his home for a \$40,000 profit. He had the opportunity to pay the creditor in SOR ¶ 1.a, but instead chose to make payments towards other debts. While making payments towards other debts is admirable, it is ironic that he chose not to pay the creditor who contributed to the increased value of the home that he sold for a profit. His decision not to pay the roofing company showed poor judgment.

AG ¶ 20(d) applies with respect to the debt alleged in SOR ¶ 1.a. At the hearing, Applicant finally understood the importance of paying this debt. He was able to settle the debt.

Applicant mitigated the security concern 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 has worked for the same defense contractor since November 2022. I considered his service in the United States Air Force Reserves and his awards and decorations. Applicant's failure to immediately resolve the debt alleged in SOR ¶ 1.a, was primarily caused by his involvement in a very contentious child custody and support case. Most of his income was used to pay a lawyer. His primary focus was his children. While he should have resolved the debt owed to Creditor A with the profits from the sale of his house, he was misinformed about his responsibility towards paying this debt. He requested and was given an opportunity to settle this debt after the hearing. The debt has been settled. Based on the unusual circumstances of this case, Applicant mitigated the security concerns raised under financial considerations. Applicant is warned that any future delinquent debts may result in the revocation of his security clearance.

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
Subparagraph 1.a:	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