



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-08837
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the security concerns about his financial problems. Eligibility for access to classified information is granted.

Statement of the Case

On June 9, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).¹ Applicant responded to the SOR on July 11, 2016, and he elected a decision on the written record in lieu of a hearing. On August 25, 2016, Department Counsel submitted his file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on October 11, 2016. He was afforded an opportunity to respond within 30 days of its receipt and to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded on October 5, 2016, and Applicant Exhibits (AE) A-E were admitted without objection. The case was assigned to me on June 2, 2017.

¹ The action was taken 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 adjudicative guidelines implemented by the DOD on September 1, 2006.

Procedural Issues

On August 7, 2017, I issued an order informing both parties that although the SOR referenced the adjudicative guidelines implemented by the DOD on September 1, 2006, I would be applying the revised adjudicative guidelines (AG) effective as of June 8, 2017, pursuant to Security Executive Agent Directive 4 (SEAD 4). I also permitted the parties to supplement the record with additional evidence and argument. Both parties received my order. Applicant submitted three documents, AE F-H, which were admitted into evidence without objection.² FORM Items 3-4 are admitted into evidence as Government Exhibits (GE) 3-4 without objection.³

Findings of Fact

The SOR alleges three delinquent student-loan accounts (SOR ¶¶ 1.a.-1.c.), one delinquent consumer debt (SOR ¶ 1.d.), and two medical collections (SOR ¶¶ 1.e.-1.f.). In his response to the SOR, Applicant admitted all six debts. He explained that two student-loan accounts were being rehabilitated (SOR ¶¶ 1.a.-1.b), one student loan was being paid (SOR ¶ 1.c.), and the three remaining debts had been paid (SOR ¶¶ 1.d.-1.f.). After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 31 years old. He received his general equivalency degree (GED) in May 2003. From June 2005 to September 2006, he attended a technical school, and he has been attending undergraduate-level classes since January 2012. He has had several extended periods of unemployment – June 2005 to February 2006; July 2006 to July 2007; April 2009 to October 2009; and December 2009 to August 2010 – and most of his employment over the last decade has been part time. Since May 2015, he has been employed as a graphic artist for a DOD contractor, beginning as a part-time employee and now as a full-time employee. He is not married and has no children.⁴

Applicant's admissions, his security clearance application, and the June 2015 credit report establish the six alleged debts. Two student-loan accounts were opened during his attendance at the technical school (2005-06), and they were charged off in 2009 for \$23,477 (SOR ¶ 1.a.) and \$17,807 (SOR ¶ 1.b.). Applicant has made five payments on each of these two student-loan accounts, totaling \$3,112, and he will consolidate these two loans after twelve payments.⁵

The third student-loan account (SOR ¶ 1.c.) was placed for collection in October 2011 in the approximate amount of \$10,493. Applicant claimed to have completely paid off this debt in early 2017; however, the documentary evidence does not demonstrate the

² Hearing Exhibit I.

³ FORM Items 1 and 2, the SOR and Applicant's answer, are pleadings and are included in the administrative record.

⁴ GE 3; Response to FORM.

⁵ Response to FORM, GE 3-4.

final payoff. The documentary evidence shows that he had reduced the delinquent balance to \$3,112 as of October 2016.

The delinquent consumer debt (SOR ¶ 1.d.) was placed for collection in the approximate amount of \$1,877. Applicant's June 2015 credit report corroborates his claim that this debt was paid in 2011.⁶

The two medical collection accounts – for \$297 (SOR ¶ 1.e.) and \$160 (SOR ¶ 1.f.) – became delinquent in 2013 and 2011, respectively. Applicant claimed to have paid both debts in full and provided confirmation numbers in support.⁷

Applicant attributed his financial problems to his periods of unemployment and an inability to find employment paying above minimum wage. He sought further education to improve his employment opportunities and took steps to avoid his previous student-loan pitfalls. Given his past problems with student loans, Applicant determined to pay for his undergraduate-level classes through payment plans while in school. He has maintained his payments in accordance with the payment plan since his enrollment in the fall of 2013. He also provided his lease agreement and payment history, demonstrating that he has stayed current on rent and utilities. His August 2017 credit bureau report lists no delinquent accounts other than the aforementioned student-loan accounts. He maintains one small credit-card balance and is current on his vehicle loan.⁸

Applicant's supervisor described him as "dependable, reliable, hardworking, conscientious, honest, and courteous." He also noted that Applicant had received two performance awards.⁹

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(c), the entire process is a conscientious scrutiny of a number of variables known as the

⁶ Response to SOR; Response to FORM.

⁷ GE 4. Although Applicant did not provide documentary evidence to corroborate his claims that he fully paid the debts in SOR ¶¶ 1.d.-1.f., the documentary evidence sufficiently corroborates Applicant's claims of payments on SOR ¶¶ 1.c, 1.d., and other unalleged accounts as to make his claims reliable.

⁸ Response to SOR; Response to FORM; AE A-H.

⁹ AE G.

“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 EO 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* EO 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 risk of having to engage in illegal 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 or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

As alleged, Applicant's five delinquent debts total approximately \$54,111. After his debt-resolution efforts, only the two student-loan accounts remain (SOR ¶¶ 1.a.-1.b.), totaling approximately \$38,162. These accounts have been delinquent for several years. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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 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's delinquent debts were incurred several years ago. Since 2011, he has made debt-resolution efforts and taken steps to avoid future financial problems. His delinquent debts resulted from low-paying positions and several periods of unemployment or underemployment. By furthering his education and finding full-time employment with a DOD contractor, Applicant has made significant strides in eliminating his delinquent debts. He has resolved four of the six alleged debts and has made payments towards resolving the two remaining student loans. Moreover, by paying his current tuition without incurring additional student loans, he has demonstrated financial responsibility. AG ¶ 20(a) applies.

As discussed above, Applicant's low-paying positions, part-time employment, and unemployment contributed to his financial problems. Despite circumstances beyond his control, he has resolved four of the six alleged debts, has made payments on the two remaining debts, and has acted financially responsibly in funding his education. AG ¶ 20(b) applies.

There is no evidence that Applicant has sought credit counseling. Applicant presented documentary evidence showing that his finances have stabilized, including regular, on-time payments of his rent, utilities, tuition, and vehicle loan. AG ¶ 20(c) partially applies.

The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.”¹⁰ Applicant presented substantial evidence demonstrating debt payments totaling \$15,949, beginning in 2011.¹¹ Moreover, he has a demonstrated track record of regular tuition payments dating from fall 2013. AG ¶ 20(d) applies.

While Applicant’s two student-loan accounts remain delinquent, he has established a track record of debt-resolution efforts and financial responsibility, both in addressing his delinquent debts and in handling new accounts.¹² His regular employment and tuition payments reduce the likelihood that his financial problems will recur. I find that Applicant mitigated 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 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.

¹⁰ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

¹¹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) (“All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.”).

¹² *Compare*, ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (despite the presence of unresolved debt, notably, a second mortgage loan tied to a property that had been foreclosed, Board upheld grant because clear evidence of reform and rehabilitation), *with*, ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (applicant’s resolution of alleged financial issue (overdue tax returns) insufficient to mitigate security concerns, because no extenuating circumstances to explain issue or evidence of true financial reform).

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Due to low-paying positions and several periods of unemployment, Applicant incurred several delinquent accounts, for which he has taken significant strides to resolve over the last several years. He has also taken steps to reduce the likelihood that such financial problems will recur. He is well-regarded by his supervisor for his character and work performance. I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a.-1.f:	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.¹³ Eligibility for access to classified information is granted.

Eric H. Borgstrom
Administrative Judge

¹³ See SEAD 4, Appendix A, ¶¶ 1(d) and 2(c).