



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



In the matter of:)
)
) ISCR Case No. 16-02491
)
Applicant for Security Clearance)

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On December 13, 2016, 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 (Exec. Or.) 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 (AG).¹

Applicant responded to the SOR on December 28, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 14,

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2017, scheduling the hearing for September 18, 2017. I convened the hearing as scheduled.

The Government notified Applicant on January 19, 2017, that it amended the SOR, pursuant to ¶ E3.1.13 of the Directive, to add SOR allegation ¶ 1.p. The Government's discovery letter containing the amendment, demonstrative exhibit, and exhibit list were appended to the record as Hearing Exhibits (HE) I through III. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until October 2, 2017, for him to submit additional documentation. He timely provided additional evidence, which I marked as AEs H and I and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on September 26, 2017.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.d to 1.i, and 1.k to 1.p, and denied ¶¶ 1.b, 1.c, and 1.j.²

Applicant is 31 years old. He obtained his high-school diploma in 2004 and attended college from 2013 to 2014, but did not earn a degree. He served in the U.S. military from 2004 until he was honorably discharged in June 2013, and deployed in 2007, 2009, and 2011. He has worked as an avionics technician since 2005. He previously worked for a federal contractor from June 2013 until he was laid off in December 2013. He has worked for his current federal contractor in state A since July 2015. He was first granted a security clearance in 2004.³

Applicant married in 2006, divorced in 2013, and re-married in June 2017. His wife does not work outside the home. He has four minor children, two from his first marriage for whom he has physical custody and shares legal custody, a stepchild, and a child from his current marriage.⁴

The SOR alleges 15 delinquent consumer debts for \$17,929 and a December 2012 defaulted mortgage loan that resulted in a foreclosure of his home. The SOR allegations are established by Applicant's admissions and credit reports from November 2015 and January 2017.⁵

² Response to the SOR; HE I; Tr. at 12-13.

³ Tr. at 6-9, 33-45, 47, 54-57, 58-59; GE 1.

⁴ Tr. at 6-9, 33-45, 47, 54-57, 58-59; GE 1.

⁵ Response to the SOR; GEs 1-3.

Applicant attributes his delinquent debts to his period of unemployment from December 2013 to December 2014, following his layoff, and his simultaneous divorce, during which time he lost a number of records pertaining to his debts. During this period, he received unemployment benefits once. He also moved in with his mother in state B, and worked a minimum wage, part-time sales job from January to February 2015, while attempting to find employment. He then transferred his part-time job to state C, where his ex-wife lived with their children, to assist them during a period when his ex-wife had issues. He subsequently moved with his children back to his mother's home, and then relocated again when he obtained his current job. He testified that the first time he became aware of his delinquent debts was when he was provided a copy of his credit report after he completed his security clearance application in November 2015. He had not previously thought about his debts because he lacked the income to pay them. He started resolving his debts as soon as he obtained his current job. He used his 2017 tax refund and his discretionary income to resolve his outstanding debts.⁶

Applicant testified that the underlying creditor for SOR ¶¶ 1.a and 1.h are the same. He testified that when he settled and paid SOR ¶ 1.h, which was for a store account, in February 2017, he inquired with the underlying creditor as to whether he had any other outstanding balances, in an effort to also resolve SOR ¶ 1.a. He testified that the creditor told him that he did not. Thus, he was in the process of disputing SOR ¶ 1.a. He provided documentation reflecting that he paid the settlement amount he reached for SOR ¶ 1.h in February 2017, and his September 2017 credit report reflects a zero balance for that debt.⁷

SOR ¶¶ 1.b and 1.c are for veteran's loans Applicant obtained when he attended college. He testified that unbeknownst to him, the last payment he received was an overpayment. He notified the U.S. Department of Veterans Affairs (VA) that he was unemployed at the time. As soon as he was employed, the VA garnished his tax refund in January 2017 to satisfy both debts. He provided documentation reflecting that \$1,843 of his \$8,674 tax refund was garnished in February 2016 and applied to his outstanding debts with the VA.⁸

SOR ¶ 1.d is for a cable account. Applicant testified and provided documentation reflecting that he paid this debt in February 2017.⁹

SOR ¶ 1.e is for a cellular account, and SOR ¶ 1.o is for a store account. Applicant testified that when he contacted both of these creditors in February 2017 to obtain information about these debts, the creditors told him that they could not locate any outstanding accounts for him. He testified that he has not received any

⁶ Tr. at 15, 24-26, 32, 37-45, 48, 54-57.

⁷ Tr. at 30-32, 46-47, 59-60; AEs A, F, H.

⁸ Tr. at 25-26, 56, 59-60; GE 1; AE E.

⁹ Tr. at 60-62; AE H.

correspondence from these creditors concerning any outstanding balances. He provided documentation reflecting that he paid both accounts in September 2017.¹⁰

SOR ¶ 1.f is for another cellular account. Applicant testified that he paid this debt in March 2017. He provided documentation in which he indicated that he settled this debt, and reflecting that he paid the settlement amount in March 2017.¹¹

SOR ¶ 1.g is Applicant's mortgage for the home he and his ex-wife purchased in 2009. He testified that when they could not afford to pay the mortgage, they unsuccessfully tried to sell their home before it was foreclosed in early 2014. Since the foreclosure, Applicant has not been contacted by the creditor regarding any outstanding balance. He believes this debt was resolved through the foreclosure. His September 2017 credit report reflects a zero balance for this account.¹²

Applicant testified that he contacted the credit union for SOR ¶ 1.i and attempted to resolve this debt, but it required that he pay in person, which he was unable to do since the credit union is located in state B. In addition, he needed to save the money to make a lump-sum payment required by the credit union. He was working with the credit union to resolve this debt through a cashier's check, and he expected to resolve it shortly after the hearing. He provided documentation reflecting that he paid this debt in September 2017.¹³

SOR ¶ 1.j is for another cable account. Applicant testified that he paid this debt. His September 2017 credit report and documentation reflecting a February 2017 payment corroborate his claim.¹⁴

SOR ¶¶ 1.k and 1.l are for two debts that were charged off. Applicant provided documentation to show that he resolved SOR ¶ 1.l in March 2017. The credit reports reflect that both accounts carry a zero balance.¹⁵

SOR ¶ 1.m is for a car from Applicant's marriage that was returned to the creditor and charged off. Applicant testified that he contacted the creditor the month of his hearing and was told that they would not and could not accept payment because of the status of the debt. The creditor provided with him a phone number to give to anyone inquiring about the status of the debt, though Applicant had not called the number as of

¹⁰ Tr. at 62-65; AE H.

¹¹ Tr. at 65-66; AE H.

¹² Tr. at 26-27, 46, 57-58; GE 1; AE A.

¹³ Tr. at 27-28, 32, 53-54; AEs H, I.

¹⁴ Tr. at 66-; AEs A, H.

¹⁵ Tr. at 66-68; GEs 2, 3; AEs A, B.

the hearing date. Applicant testified that he had not given up on trying to resolve this debt.¹⁶

SOR ¶ 1.n is for a store account. Applicant indicated that he settled this debt. He provided documentation reflecting that he paid the settlement amount around February 2017. His September 2017 credit report also reflects that the account was settled and has a zero balance.¹⁷

Applicant testified that he settled and paid SOR ¶ 1.p in February 2017. His September 2017 credit report and documentation reflecting a February 2017 payment corroborate his claim.¹⁸

Applicant testified that he has used his credit report to resolve his outstanding debts, and he does not have any other delinquent debts. He stated that he lives within his budget. His monthly net income is \$4,000, he has \$750 in his checking account, and \$2,300 in his savings account. He received financial counseling through the process of obtaining unemployment benefits. He provided a letter from his supervisor attesting to his trustworthiness and commendable performance.¹⁹

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(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 national security eligibility will be resolved in favor of the national security."

¹⁶ Tr. at 28-30, 32; GE 1.

¹⁷ Tr. at 68; AEs A, C, H.

¹⁸ Tr. at 26; AEs A, H.

¹⁹ Tr. at 15, 27, 32-33, 48-54, 57; AEs D, G.

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 Exec. Or. 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* Exec. Or. 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 greater risk of having to engage in illegal or otherwise questionable 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 to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Since Applicant's financial problems started in 2013, Applicant received financial counseling and he has made a good-faith effort to resolve his delinquent debts. He resolved SOR ¶¶ 1.d to 1.f and 1.g to 1.p. The foreclosure of his home in SOR ¶ 1.g is reflected as carrying a zero balance on his recent credit report. He believes he resolved SOR ¶ 1.a with SOR ¶ 1.h, and he intends to dispute any outstanding balance reported for SOR ¶ 1.a. He also believes he resolved SOR ¶¶ 1.b and 1.c through the garnishment of his tax refund in 2016. He intends to continue to try to resolve SOR ¶ 1.m, though the creditor told him it could not accept any payments for this account.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has not incurred additional delinquent debts. Applicant has resolved a majority of his debts. While he has a few unresolved SOR debts remaining, he has demonstrated a good-faith effort and has the means to continue to resolve them. AG ¶¶ 20(a) through 20(e) are applicable.

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.

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 in my whole-person analysis. Applicant resolved a majority of his debts. While he has a few unresolved SOR debts remaining, he credibly testified at hearing and there is sufficient evidence to show that he is committed to resolving them.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. 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.p:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge