



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-00316
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2018

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 March 31, 2017, 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 June 1, 2017, and he elected a determination with a hearing. On May 25, 2018, a notice of hearing was issued, scheduling the hearing for June 11, 2018. The hearing proceeded as scheduled. Applicant testified and submitted five documents, which I admitted as Applicant Exhibits (AE) A through E, without objection. Department Counsel submitted four documents, which I admitted as Government Exhibits (GE) 1 through 4, without objection. DOHA

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 June 8, 2017.

received the transcript on June 19, 2018. After the hearing, Applicant timely submitted three emails with attachments, which I admitted as AE F through X, without objection.

Findings of Fact

The SOR alleges financial considerations security concerns based on Applicant's six delinquent debts. In his response to the SOR, Applicant denied the debt in SOR ¶ 1.c., and he admitted the remaining five debts. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 41 years old. He graduated from high school in June 1994. Since January 2013, he has been employed full-time by a DOD contractor, where he currently serves as a director. There are no periods of unemployment since 2008. He was married in September 2005 and divorced in June 2014. He has two children, ages 6 and 11.²

Applicant's admissions and the January 2016 and February 2017 credit reports establish the six debts, totaling approximately \$16,800. Five of the debts became delinquent prior to his divorce, with a small utility bill (SOR ¶ 1.f.) becoming delinquent in 2015. In June 2018, Applicant paid the debts alleged in SOR ¶¶ 1.a., 1.b., 1.d., 1.e., and 1.f. Pursuant to the June 2014 divorce decree, Applicant's ex-wife was required to pay the debt in SOR ¶ 1.c. Applicant disputes his liability for the debt in SOR ¶ 1.c, but he has not initiated legal action to enforce the divorce decree because his ex-wife has no financial means to resolve the debt.³

Applicant attributed his financial problems to his marital separation and divorce. Applicant and his then-wife separated in about September 2012, when he and his two children moved out of the family home. Between September 2012 and June 2014, Applicant paid his then-wife approximately \$3,500 in monthly support. Between June 2014 and June 2018, Applicant paid his ex-wife approximately \$3,100 in monthly alimony. Although Applicant and his ex-wife share custody of their two children, Applicant receives little to no financial support from his ex-wife and the children reside with him full time. Applicant testified that his attorney's fees associated with his separation and divorce were approximately \$25,000. Applicant also testified that his ex-wife was reimbursed for their daughter's medical expenses (SOR ¶ 1.a.) from the insurer, but she did not use the funds to resolve the outstanding bill.⁴

In about 2015 or 2016, Applicant contacted a debt-resolution company to address his delinquent debts. For about a year, he participated in weekly telephonic credit counseling, wherein he discussed reducing his expenses and other debt-resolution measures. Applicant initiated contacts with at least one creditor (SOR ¶ 1.a.) to begin monthly payments; however, the creditor would only accept lump-sum payments. As his

² GE 1, GE 2.

³ AE D, E, G-K, T, X.

⁴ Tr. 31-36, 58, 63.

children's sole financial support, Applicant grew his savings and emergency fund prior to resolving his remaining debts.⁵

Following his marital separation, Applicant dramatically reduced his expenses, and his finances improved. Notwithstanding his monthly alimony payments (\$3,100), Applicant saved over \$100,000 in his 401K accounts and over \$55,000 in his checking and savings accounts. In June 2018, both his alimony payments and his daycare costs (\$1,000 a month) ceased. As of late June 2018, Applicant's net monthly remainder was approximately \$5,700.⁶

Applicant's longtime co-worker highly praised his character, work performance, and subject-matter expertise.⁷

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 "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

⁵ Tr. 29, 54, 59.

⁶ AE F.

⁷ AE R.

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 or inability 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 to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had six debts that totaled approximately \$16,800. These debts became delinquent between 2008 and 2015. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and (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;

(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.

Applicant's separation and divorce were conditions beyond his control that contributed to his financial problems and are unlikely to recur. All except one delinquent debt were incurred prior to his June 2014 divorce. Beginning with his marital separation in September 2012, Applicant was paying substantial support (over \$3,000 a month) to his then-wife. He maintained his support payments, while also being the sole financial support for his two children and saving funds to resolve his delinquent debts. He initiated credit counseling and debt-resolution efforts in about 2015, and he took drastic measures to reduce his household expenses and to grow an emergency fund. Applicant actively worked to resolve his delinquent debts and improve his financial situation. Five of the six debts have been paid, and he has significant savings to avert future financial problems. Applicant has a reasonable basis for disputing his liability for SOR ¶ 1.c., as the divorce decree assigned this debt to his ex-wife. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply.

Despite circumstances beyond his control, Applicant acted responsibly to improve his financial stability and resolve his delinquent accounts in the aftermath of his separation and divorce. He has taken significant steps to repay and otherwise resolve his delinquent debts. 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.

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.

Applicant's character, subject-matter expertise, and work performance are highly regarded. Since his September 2012 marital separation, Applicant substantially rehabilitated his finances, while paying significant spousal support and providing sole support for his two children. Given his burden to demonstrate financial responsibility, trustworthiness, and good judgment, 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, I conclude that it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric H. Borgstrom
Administrative Judge