



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



In the matter of:)
)
) ISCR Case No. 17-00390
)
Applicant for Security Clearance)

Appearances

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

04/17/2018

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 March 20, 2017, 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 April 18, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 4, 2017.

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.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 4, 2018, scheduling the hearing for January 25, 2018. I convened the hearing as scheduled.

The Government's exhibit list and discovery letter were appended to the record as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through O, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until February 8, 2018. He timely provided additional documentation, which I marked as AE P and admitted in evidence without objection. I appended to the record as HE III an email from Department Counsel indicating he did not have any objection to AE P. DOHA received the hearing transcript (Tr.) on February 1, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations.² He is 38 years old. As of his January 2016 security clearance application, he had never been married and was cohabitating with his girlfriend as of March 2015. He has a minor child who lives with them. He graduated from high school in 1998 and he earned a bachelor's degree in 2002 and a master's degree in 2008. He has owned his home since January 2013.³

Applicant has worked as a network administrator for a defense contractor since late 2017. He worked for prior defense contractors since earning his bachelor's degree in 2002. He was briefly unemployed from September to October 2009 and September to October 2012. He was first granted a DOD security clearance in 2007.⁴

The SOR alleges 10 delinquent consumer debts for \$24,784 and 7 delinquent medical debts for \$1,822. The SOR allegations are established by Applicant's admissions and credit reports from April 2016, January 2017, and December 2017. Applicant also listed his delinquent debts in his January 2016 security clearance application.⁵

Applicant attributes his delinquent debts to purchasing a home in January 2013. He was unprepared for the costs associated with home ownership and he became financially overextended. His expectation that his then-fiancé would financially contribute did not come to fruition, as she did not work outside of the home for one year after their child was born in 2012. In addition, after he and his then-fiancé ended their relationship in 2015, he was obligated to pay her \$775 monthly in child support. He also

² Response to the SOR.

³ Tr. at 8-9, 47-48; GE 1.

⁴ Tr. at 8-9, 48-52, 62-63. 77-79; GE 1.

⁵ GE 1-3; AE O.

paid \$8,000 towards costs associated with his parents' illnesses and passing in 2015, and in 2016. He acknowledged that he procrastinated in paying his debts during this period because he lacked the income to do so.⁶

Prior to receiving the SOR, Applicant started resolving his delinquent debts. He withdrew \$34,700 from his 401(k) between 2016 and 2017 to do so. He testified that he claimed the withdrawals on his tax returns, as required, and paid the applicable taxes and penalties, of which \$3,000 remained as of the hearing for which he was paying. He deliberately missed three mortgage payments during this period so that he could claim the hardship necessary to permit the withdrawals, but he was current on his mortgage as of the hearing. Upon receiving the SOR and with a friend's assistance, he pulled a copy of his credit report and called his creditors to resolve any remaining delinquent accounts, to include some not alleged in the SOR. He used money from his 401(k) withdrawals and his tax refunds to settle a number of his outstanding accounts. He also started writing letters to his creditors to ask them to remove any previously delinquent accounts that he had resolved from his credit report. He considered but elected not to pursue bankruptcy. He did not receive financial counseling.⁷

SOR ¶¶ 1.a and 1.d are for two credit cards with the same creditor. Concerning SOR ¶ 1.a, Applicant provided documentation showing that he settled the outstanding \$6,495 balance for \$4,546 in January 2018, for which three payments of \$1,515 were due monthly between January and March 2018. He testified that he made the first \$1,500 payment prior to the hearing and he expected to make the remaining two payments within a month of the hearing. Upon doing so, he then expected to resolve SOR ¶ 1.d. He did not provide documentation to corroborate his payments towards SOR ¶ 1.a or his attempts at resolving SOR ¶ 1.d. Both accounts are reported on his December 2017 credit report.⁸

SOR ¶ 1.b is for a credit card. Applicant provided documentation reflecting that he settled this debt through a \$2,500 payment to the creditor in March 2017. His December 2017 credit report reflects that this account was settled, paid, and carries a zero balance.⁹

SOR ¶ 1.c is for a credit card. Applicant provided documentation reflecting that he settled this debt through a \$1,200 payment to the creditor in March 2017. His December 2017 credit report reflects that the account was settled, paid, and carries a zero balance.¹⁰

⁶ Tr. at 26-52, 55, 61-79; GE 1; AE L, M.

⁷ Tr. at 26-52, 55, 61-79; AE N.

⁸ Tr. at 26-52, 55, 61-79; GE 1; AE J, O.

⁹ Tr. at 26-52, 55, 61-79; GE 1-3; AE H, O.

¹⁰ Tr. at 26-52, 55, 61-79; GE 1-3; AE G, O.

SOR ¶ 1.e is for a store credit card. Applicant testified that he made a \$972 payment to resolve this debt and he expected to receive documentation from the creditor reflecting such. The debt was no longer reported on the December 2017 credit report.¹¹

SOR ¶ 1.f is for a store credit card. Applicant provided documentation to show that he made payments totaling \$998 and resolved this debt as of December 2017.¹²

SOR ¶ 1.g is for a store credit card. Applicant provided a March 2017 letter from the creditor reflecting that he settled the outstanding \$1,341 balance for \$805, for which payment was due. His December 2017 credit report reflects that the account was settled and carries a zero balance.¹³

SOR ¶¶ 1.h and 1.j are for a pre-existing security system for Applicant's home that was sold to him when he purchased the home. He testified that he believed he only had one account with this creditor, and the creditor continued to charge him without notice after it discontinued the service. He also testified that he settled the debt. He provided documentation from the creditor reflecting that Applicant paid \$1,000 towards his account with this creditor in April 2017, and he had a zero balance as of January 2018.¹⁴

SOR ¶ 1.i is a debt for a prior apartment rental. Applicant provided documentation to show that he settled the debt for \$447 and the account had a zero balance as of December 2017.¹⁵

SOR ¶¶ 1.k through 1.p are medical debts totaling \$800. Applicant was uninsured for a brief period in 2015. He acknowledged that he also handled his medical debts carelessly. Prior to receiving the SOR, he pulled a copy of his credit report and discovered additional medical debts. He testified that he subsequently satisfied all of his delinquent medical debts. He provided documentation reflecting that he resolved the outstanding medical debts for SOR ¶¶ 1.k through 1.n in January 2018. He also provided documentation to show that he paid \$514 in delinquent medical debt in January 2018 with a creditor not alleged in the SOR, and he paid \$41 in December 2017 to resolve another outstanding medical debt not alleged in the SOR. His December 2017 credit report reflects only one outstanding medical debt for \$40, and it does not report SOR ¶¶ 1.o and 1.p. Applicant testified that he established a medical savings account to ensure prompt resolution of his medical bills in the future.¹⁶

¹¹ Tr. at 26-52, 55, 61-79; GE 1-3; AE O.

¹² GE 1; AE B, O.

¹³ Tr. at 26-52, 55, 61-79; AE F, O.

¹⁴ Tr. at 26-52, 55, 61-79; GE 1-3; AE C.

¹⁵ Tr. at 26-52, 55, 61-79; GE 1; AE D, O.

¹⁶ Tr. at 26-52, 55, 61-79; GE 1; AE A, E, I, O.

Since obtaining his current job in late 2017, Applicant has earned an annual salary of \$115,000. He previously earned \$80,000 annually until late 2012, and \$90,000 annually from late 2012 to late 2017. In addition, since he and his girlfriend reconciled, he was no longer obligated to pay his girlfriend \$775 monthly in child support as of mid-2017. He lives within his means. Aside from staying current on his mortgage, he paid the balance on his truck and he sold his other car. He uses only one credit card, for which he has scheduled automatic payments. He has \$6,000 in his checking account, some money in investment accounts, and he intends to start setting aside money in his 401(k). He is diligent in monitoring his credit report and intent on rebuilding his credit. Other than SOR ¶¶ 1.a and 1.d, and a non-SOR medical debt for \$40, Applicant does not have any other outstanding debts reported on his December 2017 credit report.¹⁷

Applicant testified that he comes from a military family and he is devoted to protecting our nation's defense. He also testified that he disclosed his financial issues to his employer. He provided a letter from his supervisor, who attested to Applicant's trustworthiness and commendable performance.¹⁸

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."

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.

¹⁷ Tr. at 26-52, 55, 61-79; AE K, O.

¹⁸ Tr. at 76, 78-79; AE P.

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; and

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

Applicant's financial problems started after he purchased his home in January 2013, as he was unprepared for all of the costs associated with home ownership. In addition, his expectation that his then-fiancé would financially contribute did not come to fruition, and after they ended their relationship in 2015 he was obligated to pay her \$775 monthly in child support. He also paid \$8,000 towards costs associated with his parents' illnesses and passing in 2015 and 2016. However, Applicant acknowledged that he also procrastinated in paying his debts during this period and he handled his medical debts carelessly. As such, AG ¶ 20(b) only partially applies.

Since 2013, Applicant has made a good-faith effort to resolve his delinquent debts. He demonstrated that he resolved all of his delinquent debts, with the exception of SOR ¶¶ 1.a and 1.d, and a \$40 non-SOR medical debt. He testified that he was resolving SOR ¶ 1.a, after which time he intended to resolve SOR ¶ 1.d. He also testified that he was diligent about monitoring his credit report.

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 and he has resolved a majority of his debts. While he has a few unresolved SOR debts remaining, he has demonstrated a good-faith effort and he has the means to continue to resolve them. AG ¶¶ 20(a) and 20(d) 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge