



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-01468
)	
Applicant for Security Clearance)	

Appearances

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

05/29/2018

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 May 25, 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 and requested a hearing. On October 30, 2017, a notice of hearing was issued, scheduling the hearing for November 16, 2017. The hearing proceeded as scheduled. Applicant testified and submitted one document,

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. Effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position were established to supercede all previously-issued national security adjudicative criteria or guidelines. Application of the AGs that were in effect as of the issuance of the SOR would not change the decision in this case.

which I admitted as Applicant Exhibit (AE), without objection. Department Counsel submitted four documents, which I admitted as Government Exhibits (GE) 1 through 4, without objection. After the hearing, Applicant timely submitted three emails with six attachments, which I admitted as AE B through J, without objection. DOHA received the transcript on November 30, 2017.

Findings of Fact

The SOR alleges financial considerations security concerns, based on Applicant's six delinquent debts. In his response to the SOR, Applicant admitted the debts in SOR ¶¶ 1.b., 1.d., and 1.f., and he denied the remaining allegations; however, he did admit to cosigning the student loans alleged in SOR ¶¶ 1.a. and 1.e. Applicant disputed the legitimacy of the debt in SOR ¶ 1.c. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 53 years old. He graduated from the U.S. Naval Academy in 1988. From May 1988 to October 2010, he served on active duty in the U.S. Navy, from which he honorably retired. Since November 2010, he has been employed full time as a senior vice president for a DOD contractor. He was married in 1987, and they have five children, ages 17, 20, 27, 28, and 29.²

Applicant's November 2015 and March 2017 credit reports established the six delinquent debts, totaling approximately \$77,700. These debts became delinquent between November 2010 and January 2016. The two largest debts – SOR ¶¶ 1.a. and 1.e. – are student loan accounts for Applicant's sons for which he co-signed. Applicant's sons accepted responsibility for these student loans but were unable to find meaningful work upon graduation from college. In January 2018, Applicant entered into a payment agreement to rehabilitate these two student loans. Since January 2018, automatic payments of \$292 are withdrawn monthly from Applicant's bank account in adherence to the payment agreement. In February 2018, Applicant paid the debts in SOR ¶¶ 1.b. and 1.d.³

In his SOR response, Applicant disputed the medical bill in SOR ¶ 1.c., claiming that he was incorrectly or improperly billed by the medical provider. He explained that his insurance provider was challenging this bill.

Applicant was unfamiliar with the debt in SOR ¶ 1.f. He explained that his research uncovered that the company was bankrupt or defunct, and that it had been connected to collections scams.⁴

² GE 1.

³ GE 3, 4; AE C, E, F, G, H, and I; Tr. 25.

⁴ AE C.

Applicant served on five combat deployments, and he was highly decorated during his military service.⁵ Applicant attributed his financial problems to medical and legal expenses for family members who encountered substance abuse problems following the stress from Applicant's deployments. One child has been admitted for substance abuse treatment and rehabilitation on 13 occasions since 2008. In February 2018, this child was hospitalized following an overdose and later admitted for detoxification and rehabilitation. Applicant explained that he has spent considerable time and resources on the care of his child fighting opioid addiction. Applicant's wife had multiple alcohol-related criminal offenses that caused significant legal expenses and medical expenses for rehabilitation. He further explained that he lost considerable savings in about 2007 with the market downturn, which coincided with a yearlong deployment. The loss of these savings required the student loans for his children's tuitions.⁶

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 S'OR. 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

⁵ AE A.

⁶ AE B, Tr. 22-24.

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's six delinquent debts totaled approximately \$77,700. These debts became delinquent between 2010 and 2016. AG ¶¶ 19(a) and 19(c) apply.

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 bears the burdens of production and persuasion in mitigation. Of the \$77,700 in delinquent debts, approximately \$70,500 are delinquent student loans (SOR ¶¶ 1.a. and 1.e.) for which Applicant co-signed. His two sons accepted responsibility for all payments, but were unable to fulfill their financial obligations. Applicant has adhered to a payment agreement to rehabilitate these loans and payments are automatically withdrawn from his bank account. Two other debts (SOR ¶¶ 1.b. and 1.d.) were sidelined while Applicant prioritized expenses and addressed his family's legal and medical matters. While his child's addiction problems may recur, the totality of circumstances which contributed to some of Applicant's financial delinquencies are unlikely to recur and do not cast doubt on his reliability, trustworthiness, and judgment. AG ¶ 20(a) applies.

The market downturn and family members' legal and medical expenses significantly contributed to Applicant's financial problems. As discussed above, Applicant's delinquent debts are largely his sons' delinquent student loans, which have been addressed, and Applicant has resolved two other debts. He is actively resolving his past financial problems and he has acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant has not provided documentary evidence of a monthly budget, detailing his monthly income and expenses. AG ¶ 20(c) does not apply.

Applicant entered into a payment agreement to rehabilitate the two student loans, and several automatic payments have been withdrawn from his bank account. He has resolved two additional debts. Only two debts (SOR ¶¶ 1.c. and 1.f.) remain unresolved. Applicant's insurance company is disputing one debt (SOR ¶ 1.c.), and Applicant discovered that the creditor in SOR ¶ 1.f. was defunct. Applicant has taken significant steps towards resolving his delinquent debts. AG ¶ 20(d) applies.

Applicant disputed the legitimacy of the debt in SOR ¶ 1.c., and he claimed that his insurance provider was challenging this medical expense on his behalf. Although Applicant did not provide documentary evidence to corroborate his claim, I find his explanation credible. AG ¶ 20(e) applies.

Applicant encountered circumstances beyond his control that contributed to his financial problems. He acted responsibly under the circumstances and took significant

steps towards resolving his financial delinquencies. 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 served on five combat deployments and was highly decorated upon his retirement from the U.S. Navy. While continuing to deal with his child's addiction problems and the associated medical expenses, Applicant has taken significant steps towards resolving his delinquent debts. 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