



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



Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: Patrick Korody, Esq.

01/30/2025

Decision

HYAMS, Ross D., Administrative Judge:

Applicant provided sufficient information to mitigate the financial considerations and use of information technology security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 26, 2022. On August 2, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline M (use of information technology). Applicant answered the SOR on August 10, 2023, and requested a hearing before an administrative judge. The case was assigned to me on June 10, 2024.

The hearing convened on October 22, 2024. Department Counsel submitted Government Exhibits (GE) 1-12, which were admitted in evidence without objection. Applicant submitted Applicant Exhibits (AE) A-S, which were admitted in evidence without objection. After the hearing, I held the record open for two weeks to allow Applicant to submit additional documentation, and he timely submitted AE T, which had seven attachments. AE T was admitted in evidence without objection.

Findings of Fact

In his answer, Applicant denied SOR ¶¶ 1.a and 1.b and admitted SOR ¶ 2.a. Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact.¹

Applicant is in his late 50's. His first marriage ended in the early 1990's and he remarried in the mid-2000's. He has adult children. He earned a bachelor's degree in the 1990's and a master's degree in the 2000's. He served in the military, in active and reserve capacities, from the 1980's to 2010's. His military service was exemplary. His records show accomplishment of specialized training and awards. He earned the title of honor graduate in one of his specialized training programs. He had multiple overseas and combat deployments. He is now retired from military service and works as a subject matter expert on a software project for a government contractor. (Tr. 25-30; GE 1; AE C, D)

Applicant's military experience afforded him unique and profitable contracting opportunities all over the world. After September 11, 2001, his expertise and services were in high demand. He was offered work opportunities in overseas locations, some in war zones. In about 2010, he achieved considerable success and notoriety in his field. (Tr. 40-117; AE E)

In about 2013, a personal dispute between Applicant and a former associate became known in his industry. In 2014, Applicant and a group of other persons were sued for defamation by this former associate. The case was ultimately dismissed in 2015. At that time, Applicant had legal insurance and his legal expenses were covered through the insurance plan. (Tr. 40-117; AE F, G, H)

The dispute with the former associate interrupted Applicant's employment opportunities and tarnished his brand and reputation. It also greatly impacted his income. The record shows that Applicant's income went from about \$120,000 in 2006-2010, to \$325,000 in 2011, \$125,000-\$150,000 in 2012 and 2013, and then less than \$40,000 for five years, from 2014-2018. (Tr. 40-117; GE 4, 5, 3 ; AE F, T)

Starting in about 2013, Applicant was harassed and threatened by the former associate, and these actions escalated to the point where Applicant and his family had to move several times for their safety. In 2015, a lifetime protective order was entered against the former associate. Applicant's finances were so tight that friends helped him afford legal assistance for the protective order, however, the protective order did not end the threat. (Tr. 40-117; AE I, J)

In 2015, Applicant filed a defamation suit against a third party, because it appeared that they facilitated harassment and defamation of Applicant by the former associate. The case concerned a novel but valid legal issue. The case was originally filed in state court

¹ The facts in this case are obscured because of physical security concerns.

but was removed to federal court. In federal court, the case issues became too complicated and voluminous for Applicant's attorney to properly handle, and summary judgment was granted to the defendant in 2017. The attorney was hired on a contingency fee basis because at that time, Applicant could not afford to pay an attorney who required a retainer. (Tr. 40-117; GE 4, 5, 3; AE F)

The defamation, threats, harassment, and loss of employment opportunities greatly impacted Applicant's career and his family. He went from being a well-recognized expert and high earner to homeless in about two years. The former associate was able to find Applicant after his first few moves, using public resources. Applicant and his family continued moving for their safety, including to different states. During this time, Applicant had almost no earnings, and many of his debts became delinquent. Applicant was not living beyond his means prior to his debts becoming delinquent. To meet his basic expenses, he had to ask for small loans from family and friends. He borrowed about \$50,000 total. (Tr. 40-117)

Applicant and his family lived in the apartments and homes of friends who were working overseas and minimized their expenses. On several occasions, Applicant tried to restart his brand and reestablish himself in his field, but he found the opportunities were no longer there. His concerns for his safety prohibited him from taking other jobs, because it would create exposure and new security vulnerabilities. (Tr. 40-141)

Applicant gave up on his prior field of work and sought new employment opportunities. He obtained a certification in a parallel discipline and did contract work overseas to start repaying his delinquent debts. He earned about \$130,000 in 2019. However, once the COVID-19 pandemic started in March 2020, he was unable to work or travel for over six months. In 2021, he sought and obtained employment near his home with his current employer. (Tr. 40-117; AE O, P, Q, T)

One of the consequences from his overseas work in the 2010's was an unexpected debt to the IRS of about \$75,000 for tax years 2012 and 2013. The debt was due to an error by his accountant. This debt has been resolved and was not alleged in the SOR. Applicant established a payment plan with the IRS in 2014, for about \$1,200 monthly, and made consistent payments until it was resolved in 2019. He responsibly resolved his tax debt before starting to repay the loans from family and friends in 2020. His family and friends have been fully repaid, and he provided documentary evidence of many of these payments. He paid other debts when he was able, usually through small payments. He reported that at times he had to make choices between how much his family ate for the month and debt payments. (Tr. 40-117; AE K, L)

Under Guideline F, the SOR alleges two charged off debts. The status of the debts is as follows:

SOR ¶ 1.a alleges a charged-off credit card account for \$23,186. Applicant reported the charge off amount is larger than the original debt because it included fees and penalties. In 2014, Applicant contacted the creditor, told them he lost his job, and

requested to establish a payment plan. The creditor declined his request for a payment plan, canceled the credit card, and demanded immediate payment in full. Despite their refusal of a payment plan, Applicant made small payments to the creditor over several years. Applicant submitted evidence of a \$200 payment in 2017 but could not locate older checks showing other payments. (Tr. 74-141; GE 3, 8, 9, 10, 11; AE M, T)

In 2018, the creditor filed a lawsuit to collect the debt, but the case was dismissed, and the debt was charged off. On his credit report, the account status is listed as closed. Applicant hired an attorney to represent him in this case. After the case was dismissed, his attorney advised him not to have any further contact with the creditor. He also advised Applicant that based on his difficult financial situation, he should not make any further payments or settlement offers. His attorney told him that the creditor will write off the debt, and the resulting charge off is part of the process. He advised Applicant to save money in case the charge off created a tax obligation. Applicant followed his attorney's advice and did not have further contact with the creditor or make any further payments after the case was dismissed. (Tr. 74-141; GE 3, 8, 9, 10, 11; AE M, T)

Counsel for Applicant's security clearance case provided a legal analysis showing that in addition to the collection case being dismissed and the debt being charged off and account closed, the debt is no longer valid or collectable because it exceeds the statute of limitations. This debt did not appear on Applicant's most recent credit report in the record. (GE 3, 8, 9, 10, 11; AE T)

SOR ¶ 1.b alleges a charged-off credit card account for \$7,461. Applicant listed this debt on his SCA with the original creditor. This debt reappeared on his credit report in 2022 in a different amount and held by a different creditor. Applicant thought it was a scam because he did not recognize the debt or creditor information. Since the creditor, a collection agency, is located in the same city and state as the former associate he was hiding from, he thought it was another attempt to reveal his location. In the past, the former associate used a public record to locate him, which led to a threat and confrontation. Applicant had not received contact from the original creditor on this debt for about six years, so he believed this debt had been written off. (Tr. 74-141; GE 8, 9, 10; AE N, T)

Applicant made some payments to the original creditor while he was earning minimum amounts of income. He paid about \$3,000 during the 2014-2018 timeframe. He submitted evidence of four payments, the last three in 2018. He was unable to locate older checks showing other payments. After the debt collection lawsuit, he asked his attorney about this debt, and was given the same advice. He followed the advice of his attorney and did not contact the creditor or make any further payments on this debt. (Tr. 74-141; GE 8, 9, 10; AE N, T)

Applicant's counsel for his security clearance case requested a debt verification from the creditor. A collection agency provided a response, and the information it contained showed that the debt was barred by the statute of limitations from further collection. Around the time of the hearing, a third collection agency contacted Applicant

and made a reasonable settlement offer. Out of good faith, Applicant settled the debt for \$3,357. This debt is now resolved. (Tr. 74-141; GE 8, 9, 10; AE N, T)

Applicant expressed regret that the two debts were charged off. He tried to make payments when he was able. He asserted that under the totality of the circumstances and his indebtedness in the 2014-2021 timeframe, he responsibly repaid the IRS, delinquent debt, and personal loans from family and friends. There was insufficient evidence in the record to find that he was living beyond his means anytime in the last 25 years. His budget shows that his finances are stable, and his debts are current. He now earns about \$150,000 annually. He meets his monthly expenses and has adequate remainder, which he saves for unexpected expenses. He recently has assisted other family members in crisis, which has reduced their current savings. Next year, his wife is eligible to collect retirement, which will assist with their finances. (Tr. 74-141; AE S, T)

Under Guideline M, the SOR alleges (¶ 2.a) in May 2022 Applicant used an unauthorized USB device on a government computer that was detected and reported as a cybersecurity incident. Applicant stated the incident occurred when he provided support for his senior leadership at a large conference. The leader of his division, who is a government employee, was representing their organization and had a video embedded in his presentation, but the copy was of low quality. Applicant tried to replace it with a higher quality video file using a USB device that was issued by his employer. The USB device was rejected by his laptop, and he later received a message on screen that the use of the USB device was not permitted. He reported the actions he took and resulting message to his chain of command. He received additional training, and the concern was quickly resolved. This was the only computer incident in his entire career. (Tr. 74-117; GE 3, 7; AE B)

Witness One is Applicant's direct supervisor and is responsible for the IT equipment and efforts in their division. He has known Applicant since 2021. He was aware of this incident with the USB device. He reported that Applicant was issued the USB device to support the presentation at the conference. Neither of them knew that the computer had to be directly plugged into their employer's network when the USB device was connected. The notice that a violation occurred did not appear on that computer until it was returned back to their office and plugged into the network a few days later. Witness One had made the same mistake with an issued USB device at the conference. No one in their division was aware of this requirement, and they all underwent additional training after these mistakes occurred. There was no compromise or injury to the device, computer, or network. Applicant never lost his computer access. Witness One stated that Applicant is a subject matter expert, an excellent employee, and is reliable and trustworthy. He has daily observation of his duties and asserted that his performance is outstanding. (Tr. 30-40; AE A)

Witness Two is Applicant's senior supervisor. He has known Applicant for four years and interacts with him five days a week in professional and personal settings. He is aware of the dispute with Applicant's former associate and the resulting threats, harassment, and security concerns. He thinks that Applicant lives within his means and

believes that he is reliable, trustworthy, and has good judgement. He asserted that Applicant is their best performing employee and is loyal to the mission and the United States. (Tr. 152-158)

Applicant submitted four character letters from persons that know him personally and professionally. The letters recognize his outstanding service to the nation, state his character is well regarded, his skills and work ethic are excellent, and that he is reliable, trustworthy, and possesses good judgement. One of the writers has known him for 25 years, and previously supervised the former associate who was involved in the dispute and lawsuit with Applicant. He backs Applicant's version of events and questions the character and integrity of the other person. (AE R)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are applicable in this case:

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

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.

AG ¶ 20(a) applies. The alleged debts became delinquent under circumstances unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and judgment.

AG ¶ 20(b) applies. The conditions that resulted in the financial problem were largely beyond Applicant's control and he acted responsibly under the circumstances. Applicant made payments on both of the SOR debts alleged when he was able, while earning minimal income. Even after the creditor in SOR ¶ 1.a refused a payment plan and demanded full payment up front, Applicant sent small payments when he had the funds to do so. Applicant maintained a payment plan with the IRS to resolve a tax debt, and he repaid other delinquent debt and personal loans from family and friends.

AG ¶ 20(d) applies. Applicant has initiated a good-faith effort to repay overdue creditors and resolve his debts. He made payments when he was able, and resolved many debts over the years, including a tax debt and personal loans. Applicant has resolved the debt in SOR ¶ 1.b out of good faith.

Applicant's finances suffered due to unusual circumstances beyond his control. Applicant was not living beyond his means. Despite a dramatic reduction in his income, he minimized his living expenses and made a good faith effort to resolve his debts. He followed the advice of his attorney in the debt collection lawsuit regarding the handling of these two debts.

SOR ¶ 1.a is no longer a legally valid or collectable debt. Applicant expresses remorse that he was unable to resolve this debt before it was dismissed in litigation. The creditor bears some of the responsibility for the outcome. There is no reason that Applicant should make any further attempts to revive this debt. It has been written off by the creditor, which is common practice in the industry, and it would create an unnecessary financial burden for Applicant, who has stabilized his finances. A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts, but rather, a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

In this case Applicant clearly demonstrated good judgement, reliability, and trustworthiness. Applicant lost everything and had to start from the ground up. He is current on his bills and there are no signs of financial irresponsibility. Applicant has mitigated the financial considerations security concerns.

Guideline M, Use of Information Technology

The security concern for financial considerations is set out in AG ¶ 39:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

The use of information technology security concern is applicable in this case under AG ¶ 40 is:

(f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized;

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 41. The following are potentially applicable:

(a) so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the misuse was minor and done solely in the interest of organizational efficiency and effectiveness;

(c) the conduct was unintentional or inadvertent and was followed by a prompt, good faith effort to correct the situation and by notification to appropriate personnel; and

(d) the misuse was due to improper or inadequate training or unclear instructions.

AG ¶¶ 41(a), (b), (c) and (d) apply. Applicant performed his duties in assisting his leadership with refining their conference presentation. No one in his software development office was aware of the rule that was violated. It was completely unintentional, and he promptly notified his command of the issue. Applicant and his boss both made the same error, and both underwent additional training. There was no loss of access to his computer, and there was no compromise or injury to the device, computer, or network. This was a minor mistake that occurred almost three years ago, there have

been no other incidents, and it is unlikely to recur. This incident does not cast doubt on Applicant's reliability, trustworthiness, or judgement. The use of information technology security concern is mitigated.

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 his military service, service to the government as a contractor in the U.S. and overseas, his exemplary job performance, and the witness testimony and his character letters. 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 Guidelines F and M in my whole-person analysis.

I had the chance to observe Applicant's demeanor and assess his credibility. He adequately explained the circumstances surrounding the SOR allegations, and I found his testimony and explanations to be credible and substantially corroborated by documentary evidence.

Applicant's service to the nation has been honorable and remarkable. He has served in dangerous and difficult assignments and risked his life for the nation. He remains dedicated to public service and our national security. The whole person evidence is sufficient on its own to mitigate the security concerns in this case.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility for a security clearance. I conclude that Applicant mitigated the financial considerations and use of information technology 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.b: For Applicant

Paragraph 2, Guideline M: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge