



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



In the matter of:)
)
) ISCR Case No. 18-01538
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: *Pro se*

January 28, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On June 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on July 17, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 27, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 3, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4,

which were admitted without objection. The Applicant offered one exhibit at the hearing, referred to as Applicant's Exhibits A. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 11, 2018.

Findings of Fact

Applicant is 46 years old. He is married a second time and has two step-children, and three biological children from a previous marriage. He has an Associate's Degree. He is employed by a defense contractor as a Logistics Analyst and is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant served for twenty years on active duty in the United States Navy. He retired honorably as an E-5 in 2011.

Applicant states that he became delinquently indebted while in the military. He separated from his first wife in 2005. After their divorce, Applicant's debt accumulated as he had the responsibility to take care of two households, including his ex-wife and their three children, as well as himself. Applicant testified that he was stationed overseas at the time, and he was simply trying to make ends meet. To assist him with this financial responsibility, he took out a loan with Navy-Marine Corps Relief Society, but he never obtained any financial counseling, budgets, or any other services that could have possibly helped him with this financial situation. After retiring from the Navy in 2011, Applicant found it difficult adjusting to the civilian salary which was substantially less than what he had been making in the military. Although he received a military pension, his pension and his civilian salary together was still less than what he had earned in the military. (Tr. pp. 37 -38.) As a result, he became delinquently indebted to the following creditors.

The SOR identified fourteen debts under this guideline, totaling in excess of \$51,000. In his answer, Applicant admitted each of the allegations set forth under this guideline. Applicant began working for his current employer in 2015, and has been trying to remedy his financial indebtedness since then. Credit Reports of the Applicant dated January 5, 2018, and August 19, 2018, confirm each of the debts listed in the SOR. (Government Exhibits 3 and 4.)

1.a. A debt owed to a creditor for an account that was placed for collection in the approximate amount of \$24,747. This is for a car that Applicant leased that had excessive mileage. The debt remains owing. (Tr. p. 24.)

1.b. A debt owed to a creditor for an account that was charged off in the approximate amount of \$7,678. This is a personal loan that Applicant took out. The debt remains owing. (Tr. p. 25.)

1.c. A debt owed to a creditor for an account that was placed for collection in the approximate amount of \$4,303. The debt remains owing. (Tr. p. 26.)

1.d. A debt owed to a creditor for an account that was placed for collection in the approximate amount of \$3,478. The debt remains owing. (Tr. p. 26.)

1.e. A debt owed to a creditor for an account that was placed for collection in the approximate amount of \$3,363. This is a military credit card. Applicant states that he is currently making payments toward the debt of \$70 monthly through allotments. (Tr. p. 27.) He has provided no supporting documentation.

1.f. A debt owed to a creditor for an account that was charged off in the approximate amount of \$2,590. This was a personal loan that Applicant has paid in full. (Tr. p. 27, and Applicant's Exhibit A.)

1.g. Applicant owed to a creditor for an account that was placed for collection in the approximate amount of \$619. This is a personal loan. The debt remains owing. (Tr. p. 29.)

1.h. A debt owed to a creditor for an account that was charged off in the approximate amount of \$536. The debt remains owing.

1.i. A debt owed to a creditor for an account that was placed for collection in the approximate amount of \$1,349. The debt is related to an apartment that Applicant rented. The debt remains owing. (Tr. p. 30.)

1.j. A debt owed to a creditor for an account that was placed for collection in the approximate amount of \$1,276. The debt remains owing.

1.k. A debt owed to a creditor for an account was placed for collection in the approximate amount of \$676. This is a credit card. The debt remains owing. (Tr. pp. 30-31.)

1.l. A debt owed to a creditor for an account that was placed for collection the approximately amount of \$300. This is for automobile insurance. The debt remain owing. (Tr. p. 31.)

1.m. A debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$210. This is a medical bill. The debt remains owing. (Tr.p.31.)

1.n. A debt owed to a creditor for an account that was placed for collection in the approximately amount of \$61. The debt remains owing. (Tr. p. 31.)

With his current employer, Applicant is now earning about \$80,000 annually. He states that he has now gotten to the point where he is above water and can start paying some of his delinquent debts off. (Tr. p. 36.)

Guideline E – Personal Conduct

The Government alleges that the Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant admitted the allegation set forth under this guideline. He completed an e-QIP dated December 14, 2017. (Government Exhibit 1.) Section 26 asked about his Financial Record, specifically, “Delinquency Involving Routine Accounts Other than Previously Listed.” The question asked, “In the past 7 years, have you defaulted on any type of loan?” It also asked, “In the past seven years have you had bills or debts turned over to a collection agency?” It further asked, “In the past seven years have you had any account or credit card suspended, charged off or cancelled for failing to pay as agreed? In the past seven years have you been over 120 days delinquent on any debt not previously entered? and, are you currently over 120 days delinquent on any debt not previously entered? Applicant responded, “NO,” to all four questions. (Government Exhibit 1.) These were false answers. Applicant failed to list any of the delinquent debts set forth in allegations 1. a., through 1. n., of the SOR.

Applicant explained that the reason he did not list his delinquent debts on his security clearance application is because there were “a lot to list”. He knew that he was going to have to answer questions about them during his personal interview and so he did not list them. He states that he did not intent to deceive or hide anything from the Government. (Tr. p. 32.)

I do not find this testimony credible. Applicant knew or should have known that he should answer the questions on the security clearance application truthfully. He should have listed his delinquent debts in response to the questions in Section 26. Under the circumstances, he obviously thought that there were so many he did not want to be bothered.

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance 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 as to 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant remains excessively indebted. He states that he has paid off one of the debts listed in the SOR and is making payments toward resolving another. There is no evidence in the record to demonstrate that he is now financially stable, that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

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

Trying to maintain two households on one person's salary is difficult enough, especially where child support payments are required. This situation obviously contributed to Applicant's financial difficulties. In addition, having to adjust from living on a military salary to a civilian salary, operating with less income and having to pay more taxes is also more financially burdensome. In this case, Applicant encountered both of these situations. However, at this point, although he has been working full time for several years, he has not yet started his monthly payments to resolve his delinquent debts, and they, for the most part, remain excessive and outstanding. At this point, it cannot be said that he is financially stable or that he has made a good faith effort to resolve his indebtedness.

Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately falsified his e-QIP in response to questions regarding his delinquent debts. Applicant is a retired veteran who understands the importance of being truthful on his security clearance application. He knew that he had a lot of delinquent debts, and he deliberately failed to disclose them in response to questions requiring him to do so on the e-QIP. The Government relies on one's responses to the questions on the e-QIP to determine one's trustworthiness. If the answers are not truthful, the Government is misled, and Applicant cannot be trusted. Under the circumstances, Applicant knew about his financial indebtedness and deliberately chose not to list them. He was not honest with the Government about them. There are no applicable conditions that could be mitigating under AG ¶ 17.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant:
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant:
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge