



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



In the matter of:)	
)	
)	ISCR Case No. 18-01999
)	
)	
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 20, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On August 20, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 14, 2018, and requested a hearing before an administrative judge. The case was assigned to me on November 6, 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 6, 2018. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which

were admitted without objection. The Applicant offered one exhibit, referred to as Applicant's Exhibit A which was admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on December 13, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted one document, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 17, 2018.

Findings of Fact

Applicant is 30 years old. He is not married and has no children. He has a high school diploma. He is employed by a defense contractor as a field technician. He 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.

The SOR identified twelve delinquent debts totaling in excess of \$42,000. Applicant admits each of the allegations set forth in the SOR, except 1.a. Credit reports of the Applicant dated June 24, 2017; and October 29, 2018, reflect that the debts are still owing. (Government Exhibits 5 and 6.)

Applicant admits that over the years he has lived beyond his means. He has spent money he really could not afford, on his hobby, which is electronics. He explained that he enjoys buying computer parts in order to prepare to do graphic design and web design. Until July 2015, he was able to pay his bills. In July 2015, he was laid off from a previous job, and he did not find work for about three to four months. (Tr. p. 47.) During this period, his credit cards were his only source of income and he continued to use them as though his income had not been effected.

Applicant started working for his current employer in 2017. He states that he could not find anyone affordable to help him with his finances until recently. In October 2018, Applicant hired a credit counselor to help him resolve his debt. (Applicant's Exhibit A.) However, during his interview with an investigator in July 2017, when his delinquent debts were brought to his attention, Applicant stated that he was planning to pay his debts in full and/or would be setting up payments plans for his delinquent accounts by the end of 2018. (Tr. p. 33, and Government Exhibit 2.)

The following delinquent debts, consisting of bank and department store credit cards and personal loans, are still owing:

1.a. Applicant is indebted to BMW Financial for an account that was charged off in the approximate amount of \$14,874. Applicant states that he co-signed for a friend for a car loan that his friend could not afford to pay. (Tr. pp. 25 -26.)

1.b. Applicant was indebted to Portfolio for an account that was placed in collection in the approximate amount of \$7,845. (Tr. pp. 31 - 33.)

1.c. Applicant was indebted to Wells Fargo Bank for an account that was charged off in the approximate amount of \$4,880. (Tr. pp. 33 - 34.)

1.d. Applicant was indebted to Portfolio for an account that was placed in collection in the approximate amount of \$3,442. (Tr. pp. 34 - 35.)

1.e. Applicant was indebted to Wells Fargo Bank CD SVC for an account that was charged off in the approximate amount of \$2,643. (Tr. pp. 35 - 36.)

1.f. Applicant was indebted to SYNCB/PayPal for an account that was charged off in the in the approximate amount of \$413. (Tr. p. 35.)

1.g. Applicant is indebted to Portfolio for an account that was placed for collection in the approximate amount of \$2,373. (Tr. pp. 36 - 37.)

1.h. Applicant was indebted to Midland MCM for an account that was placed for collection in the approximate amount of \$1,500. (Tr. p. 37.)

1.i. Applicant was indebted to TBOMMILSTN for an account that was past due in the amount of \$160 with a total approximate balance of \$509. Applicant states that he settled the debt for about \$350. (Tr. p. 37.)

1.j. Applicant was indebted to Midland MCM for an account that was placed in collection in the approximate amount of \$474. (Tr. p. 39 - 40.)

1.k. Applicant was indebted to SD County for an account that was charged off in the approximate amount of \$232. (Tr. p. 40.)

1.l. Applicant was indebted to Midland Funding for an account that was placed for collection in the approximate amount of \$3,654. (Tr. p. 41.)

Applicant admits that he got into this financial situation because he was spending beyond his means. He still has a lot of responsibilities that include helping his parents pay the rent and taking care of other expenses, besides his own bills. At the end of the month he is left with a very small amount of money that he has to manage to use for gas, food and other things. (Tr. p. 46.) Applicant states that he is currently trying to find

a better paying job. He wants a stable income where he can use a portion of that income to pay his bills and place the rest in savings. (Tr. p. 50.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 or unwillingness 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 has spent beyond his means and now has twelve delinquent debts. He remains delinquently indebted in the amount of approximately \$42,000. Of the twelve debts listed in the SOR, he has paid one of them. Even his smaller debts have not been paid. The evidence is sufficient to raise the above disqualifying conditions.

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

- (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, or a death, divorce, or separation), 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.

But for a three or four month period following Applicant's job lay-off, Applicant has been consistently employed and has received income. Even so, since obtaining full-time employment with a defense contractor in 2017, Applicant has done little to show that he can or will resolve his debts. He states that he hired a debt counselor, yet there is nothing in the record to show that they have done anything to help him resolve his debts. Applicant has settled one debt, but the other eleven remain owing. Even the smaller debts that one would assume he could pay if nothing else, have not been paid. He has not set up payment plans with the creditors that he is following, nor has he paid off the outstanding debt. There is no clear evidence in the record that he has acted reasonably and responsibly under the circumstances. His actions reflect unreliability, untrustworthiness, and poor judgment.

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 security concern.

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

Subparagraphs 1.a.:	Against Applicant
Subparagraphs 1.b.:	Against Applicant
Subparagraphs 1.c.:	Against Applicant
Subparagraphs 1.d.:	Against Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	Against Applicant
Subparagraphs 1.h.:	Against Applicant
Subparagraphs 1.i.:	For Applicant
Subparagraphs 1.j.:	Against Applicant
Subparagraphs 1.k.:	Against Applicant
Subparagraphs 1.l.:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge