



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



In the matter of:)
)
) ISCR Case No. 18-02247
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: Pro se

August 29, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On October 15, 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 December 23, 2018, and requested a hearing before an administrative judge. The case was assigned to me on January 22, 2019. The matter was unable to be scheduled until Applicant was back in CONUS. The Defense Office of Hearings and Appeals issued a notice of hearing on May 16, 2019, and the hearing was convened as scheduled on June 5, 2019. The Government offered

seven exhibits, referred to as Government Exhibits 1 through 7. Government Exhibit 4 was admitted over an objection from the Applicant. (Tr. pp. 28-30.) The other documents were admitted without objection. (Tr. pp. 25- 32.) The Applicant offered three exhibits at the hearing, referred to as Applicant's Exhibits A through C, which were all admitted without objection. (Tr. pp. 40-41, 41-42, and 46.) Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 17, 2019.

Findings of Fact

Applicant is 61 years old. He is married with two adult children. He is employed by a defense contractor as a Linguist/Translator. 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 alleges that Applicant incurred delinquent credit card debt and other miscellaneous consumer debts totaling approximately \$38,000. In his answer, he admits each of the debts listed in the SOR. Credit reports of the Applicant dated November 12, 2016; and January 18, 2019, confirm this indebtedness. (Government Exhibits 5 and 6.) Applicant began working for his current employer in September 2016. In order to upgrade his position with the company, a security clearance is required.

Applicant was born in Afghanistan in November 1957. He came to the United States in 1986. He married an Afghan woman in 1988, who later became an American citizen. He became a naturalized citizen in 1996. From 2010 to 2013, Applicant worked for a defense contractor. In 2013, he resigned from his position because he thought the pay was too low, and he did not want to be away from his wife and family for such long periods. He was unemployed for about six months before he became an Uber and Lyft driver. While working as a driver, Applicant's his income was limited, he was unable to afford to pay his bills, and they became delinquent. In October 2016, Applicant began working for his current employer and has had stable employment since then. His personal financial statement dated July 29, 2016, shows income of approximately \$7,000 monthly and is still accurate. After paying his monthly expenses, Applicant has about \$1,000 left in discretionary funds available to pay his delinquent debts, but has chosen not to do so.

The following delinquent credit card debt and consumer debt accrued:

1.a. A delinquent credit card debt, opened in 2006, was charged off in the approximate amount of \$16,378 and remains delinquent and owing. Applicant states that he borrowed \$10,000 to open a printing business for his son. The business did not

do well and the account went delinquent in 2017. Applicant lost approximately \$30,000 in this venture. (Tr. p. 65-66.)

1.b. A delinquent credit card debt, opened in 2014, is owed to a bank and charged off in the approximate amount of \$9,181 remains owing. Applicant borrowed money on this credit card for his son's printing business as well. (Tr. p. 69.)

1.c. A delinquent credit card debt, opened in 2014, was charged off in the approximate amount of \$6,173 and remains owing. After losing money on his son's business, this credit card was used to pay for Applicant's gas and other personal expenses. (Tr. p. 71.)

1.d. A delinquent debt, opened in 2016, is owed to a creditor for an account that was placed for collection in the approximate amount of \$5,749 and remains owing. This was for dental work for his son. (Tr. pp. 74-75 and Government 6.) Applicant states that he is currently making payments of \$240 monthly toward this debt that he started in February of this year. (Tr. p. 75.) He admitted that after he received the SOR, he started making these monthly payments. (Tr. p. 75.)

1.e. A delinquent debt owed to a department store for an account that was placed for collection in the approximate amount of \$655 remains owing. Applicant states that used the card to purchase clothes for himself, his wife and children. (Tr. p. 76.)

Applicant states that he promised to pay back everything he owes. He has a plan to pay each of these creditors off next year when he has sufficient monies available to do so.

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 completed a security clearance application (e-QIP) dated November 7, 2016. (Government Exhibit 1.) Section 26 of the application asks about his financial record. In response to the question that asked whether in the past seven years, he had bills or debts turned over to a collection agency?; had he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?; had he been over 120 days delinquent on any debts?; or are is he currently over 120 days delinquent on any debts? Applicant answered, "NO." Applicant knew or should have known about his delinquent debts when he completed the application. He deliberately failed to disclose the debts set forth under subparagraphs 1.a., through 1.e.

In October 2014, Applicant applied for a position with another defense contractor as a Linguist/Translator. As part of the application process, Applicant was given a language proficiency test. Applicant scored a 4 - plus on this exam, which is a good score. Applicant stated that he used a dictionary and a smart phone to google his answers.

In January 2015, that same defense contractor required the Applicant take another language proficiency test. This time, it took place in a different state. Two proctors oversaw the exam. Applicant asked the proctor for a dictionary, and they told him that it was not allowed. Applicant was also not allowed to google the answers on his smart phone. Applicant scored a 2 on the exam. He was asked to read a paragraph aloud. He was unable to read the paragraph. Applicant told the proctor that he could not read and write English very well. Applicant's job application with the company was subsequently terminated, and he was not hired for the position. An incident report dated January 22, 2019, prepared by the facility security officer, indicates that Applicant cheated on his first exam based upon the fact that he was unable to successfully complete the requirements on the second exam. (Government Exhibit 7.) Applicant denies that he cheated, but does admit that he told the proctor that if he does not have a dictionary he cannot translate the words from "Dari" and "Pashto" to English. He also told them that he does not read or write English well. (Government Exhibit 7.)

From 2010 to 2013, Applicant worked as a competent linguist/translator for his previous employer, the Marine Corps, and other Armed Forces. During that time, he received a number of awards and commendations for his excellent service. (Applicant's Exhibit C.)

Letters of recommendation from an Army Intelligence Officer and a Marine Corps Linguist Manager attests to Applicant's hard working nature, and superb work performance. Applicant is considered a valued member of the team who is technically competent, loyal, dedicated and has contributed to the success of their operation. (Applicant's Exhibit C.)

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

Applicant incurred delinquent debt that he has been unable to afford to pay. At this time there is insufficient information in the record to conclude that he is now financially stable, or that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. Except for one debt, the dental bill, no regular monthly payments are being made toward his debts, nor has he shown that he has made significant progress in this area. 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.

Obviously, Applicant's decision to invest in his son's printing business was not a good one. Applicant borrowed \$30,000 to start the business, which he lost in three

months. There were circumstances beyond the Applicant's control that contributed to his financial difficulties. However, except for a six-month period, Applicant has been gainfully employed since he resigned from his position in 2013. He essentially ignored his delinquent debt until he received the SOR when he started making payments toward the dental bill. At this point, however, 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.

It is not clear from the evidence presented whether the Applicant actually deliberately cheated on his first language proficiency exam, or whether he was misinformed about the fact that he could use a dictionary or smart phone during the exam. In either case, Applicant admitted to the proctors that he could not read and write English well. Based upon this fact, it is puzzling how Applicant worked competently in his position as a Linguist. Under the circumstances, however, it cannot be concluded that Applicant cheated on the exam.

On the other hand, with respect to the Applicant's responses to Section 26 regarding his financial record, Applicant knew or should have known about his delinquent debts. The Government relies on one's responses to questions on the security clearance application to determine one's good judgment, trustworthiness and reliability. Applicant was not honest, candid, or truthful in answering the questions about his financial situation. He cannot be trusted. Accordingly, it cannot be determined that he has demonstrated that he is sufficient trustworthy to access classified information. Under the circumstances, Applicant deliberately falsified his security clearance application by failing to disclose his delinquent debts. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.: through 1.e.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For 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