



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



In the matter of:)	
)	
)	ISCR Case No. 18-02468
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: *Pro se*

June 18, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 7, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On October 22, 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 December 14, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on March 21, 2019, and the hearing was convened as scheduled on May 8, 2019. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were

admitted without objection. The Applicant offered two exhibits, referred to as Applicant's Exhibits A and B, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on May 15, 2019.

Findings of Fact

Applicant is 37 years old. He is married and has two children. He has a Bachelor's of Science degree in Electronics and Electrical Engineering. He is employed by a defense contractor as a Test Engineer/Hardware. 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 fourteen delinquent debts totaling almost \$400,000. Applicant denies each of the allegations set forth in the SOR, except 1.f., 1.g., 1.h., and 1.n. Credit reports of the Applicant dated July 25, 2017; and October 2, 2018, reflect that the debts are still owing. (Government Exhibits 2 and 3.)

Applicant was born in Kampala, Uganda in September 1982. He came to the United States as a teenager in March 1999. His mother was granted asylum here, and he and his siblings were allowed to come with her. Applicant became a naturalized United States citizen in 2003. Applicant wanted to pursue the American dream of attending college and getting a good job to support his family. He took out student loans to pay for college with hopes that his education would help him in his career. He planned to pay off the loans when he started work. He also co-signed for some of his wife's student loans and his brother's student loans. He also has some delinquent consumer debt and a few delinquent medical bills. He attributes some of his delinquent debt to long periods of unemployment. Applicant was unemployed from February 2013 to March 2014; October 2014 to February 2015; and November 2015 to January 2017. Applicant had difficulty finding work and even worked as a truck driver in order to make ends meet.

Applicant started working for his current employer in 2017. He stated that he has never received financial counseling but he has contacted a credit counselor to help him with his delinquent debt, but has not yet hired them. (Tr. p. 53.) Applicant has not been able to afford to pay his delinquent debt and most of the debt listed in the SOR remains owing. He plans is to start by paying the smaller debt first, and when those debts are resolved, he will begin with the others. Applicant received a letter from one of his student loan creditors who informed him that to avoid wage garnishment he was to establish a payment plan by September 2018. Applicant thought that it would be better to simply allow the creditor to garnish his wages. His wages are currently being

garnished in the amount of \$700 monthly to pay the debts set forth in allegation 1.d and 1.e., of the SOR, which total approximately \$81,000.

After taxes and the garnishment, Applicant states that he nets about \$3,600 monthly, \$1,800 per pay period. (Tr. p. 67.) His wife now works part-time. After they have paid their regular monthly expenses including rent, car insurance, utilities, food, clothing, telephones, child care, etc., they have some money left over that Applicant puts into his savings accounts. He currently has about \$10,000 in a savings account and \$20,000 in his retirement account. (Tr. p. 72-73.)

The following delinquent debts remain owing:

1.a. Applicant is indebted to a creditor for a student loan account that was charged off in the approximate amount of \$105,111.

1.b. Applicant is indebted to a creditor for a student loan account that was charged off in the approximate amount of \$62,090.

1.c. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$59,844.

1.d. Applicant is indebted to a creditor for an account that was placed in collection in the approximate amount of \$54,828. Applicant states that this debt is being paid through payroll garnishment in the amount of \$700 per month.

1.e. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$24,604. Applicant states that this debt is being paid through payroll garnishment in the amount of \$700 per month.

1.f. Applicant is indebted to a creditor for an account that was charged off in the in the approximate amount of \$9,658.

1.g. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,811.

1.h. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,491.

1.i. Applicant is indebted to a creditor for an account that was placed for collection in the amount of approximate amount of \$489.

1.j. Applicant is indebted to a creditor for a medical account in the approximate amount of \$446.

1.k. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$121.

1.l. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$66,058.

1.m. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$10,000.

1.n. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$6,762.

Two debts owed to one creditor set forth in allegations 1.d., and 1.e., are being paid through wage garnishment. Applicant's remaining delinquent debt is still outstanding. Applicant testified that he hopes to get his finances in order and be able to pay his delinquent debts soon. His career plan is to work in the defense industry and utilize the skills he acquired through his formal education.

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 is excessively indebted and has not made any effort to resolve his debts. Of the fourteen debts listed in the SOR, one is being paid through garnishment

of his wages. 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.

Applicant's financial distress has been partially caused by the long period of unemployment he has experienced. 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 is planning to hire a credit counselor, yet he has not done so yet. There has been little or no movement with his debts since the SOR was issued. One creditor is being paid through wage garnishment. Applicant has not set up payment plans that he is following, nor has he paid off any of 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., through 1.n.	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