



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



In the matter of: )  
)  
) ISCR Case No. 19-00313  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

November 18, 2019

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On November 2, 2016, Applicant submitted a security clearance application (e-QIP). On March 28, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on April 8, 2019. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 15, 2019, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on May 16, 2019, and received by him on an unknown date. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant failed to respond to the FORM. Applicant did not object to Items 1

through 6, and they are admitted into evidence, hereinafter referenced as Government Exhibits 1 through 6.

### **Findings of Fact**

Applicant is 44 years old. He has a bachelor's degree. He is employed with a defense contractor as a Flight Systems Engineer. He is applying for a security clearance in connection with his employment. Applicant began working for his current employer in January 2016.

### **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 eleven delinquent debts that have been charged off, placed for collection, and a repossession, totaling approximately \$160,000. Applicant admits to each of the delinquent accounts listed in the SOR, except allegation 1.b., which he claims is now a current account. Credit Reports of Applicant dated March 21, 2017; January 3, 2019; and May 9, 2019, confirm the indebtedness listed in the SOR. (Government Exhibits 4, 5 and 6.)

Applicant served in the U.S. Navy inactive reserves from February 1995 to March 1998, when he received an Other than Honorable Discharge for testing positive for THC during a drug screening. (Government Exhibit 2.)

Applicant has a history of financial indebtedness. He attributes his debts to an ongoing divorce and his plans to file bankruptcy when his divorce becomes final. Applicant provides no other details concerning why the indebtedness occurred, when they will be resolved, or if he is capable of resolving them. There is no evidence of explanation or mitigation regarding the following allegations listed in the SOR.

These delinquent debts are listed in the SOR and remain owing:

1.a. A delinquent debt owed to BMW FIN in the approximate amount of \$46,568 for the balance due on a vehicle that was repossessed remains owing. Applicant failed to submit anything in response to the FORM, to show any ongoing payments being made. This account remains owing. (Government Exhibit 6.)

1.b. A delinquent debt owed to ED FIN/ESA is past due in the amount of \$474 with a total balance of \$32,624. Applicant failed to submit anything in response to the FORM, to show any ongoing payments being made. The account remains owing. (Government Exhibit 6.)

1.c. A delinquent debt owed to CHRYSLRCAP was charged off in the approximate amount of \$20,877. Applicant failed to submit anything in response to the FORM, to show that ongoing payments being made. The account remains owing. (Government Exhibit 6.)

1.d. A delinquent debt owed to PARTNERS was charged off in the approximate amount of \$19,765. Applicant failed to submit anything in response to the FORM, to show any ongoing payments being made. The account remains owing. (Government Exhibit 6.)

1.e. A delinquent debt owed to CITIBANK was charged off in the approximate amount of \$13,283. Applicant failed to submit anything in response to the FORM, to show any ongoing payments being made. The account remains owing. (Government Exhibit 5.)

1.f. A delinquent debt owed to WFB CS SVC was charged off in the approximate amount of \$13,283. Applicant failed to submit anything in response to the FORM, to show any ongoing payments being made. This account remains outstanding. (Government Exhibit 6.)

1.g. A delinquent debt owed to SHEFFIELD was charged off in the approximate amount of \$6,592. Applicant failed to submit anything in response to the FORM, to show a good faith effort or any ongoing payments made. The account remains outstanding. (Government Exhibit 6.)

1.h. A delinquent debt owed to CAP ONE was charged off in the approximate amount of \$4,587. Applicant failed to submit anything in response to the FORM, to show a good faith effort or any ongoing payments made. The account remains outstanding. (Government Exhibit 6.)

1.i. A delinquent debt owed to CBNA was charged off in the approximate amount of \$3,238. Applicant failed to submit anything in response to the FORM, to show a good faith effort or any ongoing payments being made. The account remains owing. (Government Exhibit 6.)

1.j. A delinquent debt owed to BK OF AMER was charged off in the approximate amount of \$710. Applicant failed to submit anything in response to the FORM, to show a good faith effort or any ongoing payments made. (Government Exhibit 6.)

1.k. A delinquent debt owed to VERIZON was charged off in the approximate amount of \$916. Applicant failed to submit anything in response to the FORM, to show a good faith effort to any ongoing payments made. (Government Exhibit 6.)

The record is void of evidence in mitigation. Applicant has not explained how or why he fell behind on his financial obligations in the first place, accumulating over \$160,000 in debt. He has not provided any evidence in mitigation. There is no documentary evidence to show that he has done anything to resolve his delinquent

debt. There is nothing in the record to indicate when his financial situation will be resolved, and whether it is likely to recur. There is insufficient documentation in the record to show that Applicant can control his finances and live within his means without difficulty. He remains excessively indebted.

## **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. According to AG ¶ 2(a), 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 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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 relating to the guideline 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.

Evidence from his most recent credit report dated May 9, 2019, reveals that Applicant still has nine charge-off accounts, one repossession, and one collection account. He remains excessively indebted to the creditors listed in the SOR. He has failed to respond to the FORM, and did not provide any documentary evidence to show that they are being resolved in any fashion. He only mentions that he is currently in a divorce and will file bankruptcy when his divorce is final. This is insufficient and failed to provide mitigation. The record lacks appropriate documentation to substantiate the information he has provided. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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.

Applicant has provided no explanation for the delinquent debts, specifically how or why he got into debt in the first place. He also failed to provide evidence in mitigation to show that he is doing anything to resolve the debt. Under the particular circumstances here, Applicant has failed to establish that he has acted reasonably or responsibly with respect to his debts. As it stands, Applicant has done nothing as of yet to resolve his debts. He has not demonstrated that future financial problems are unlikely. Most importantly, it has not been demonstrated that his current financial problems are under control.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. In the Government's FORM, Applicant was told to provide documentary evidence in response to the FORM that supports the applicable mitigating conditions. Applicant failed to respond. There is insufficient documentation in the record to show that Applicant has made any effort to resolve or

work toward resolving his delinquent debt. Accordingly, Applicant has not demonstrated that he is financially responsible.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations 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 the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.k.:	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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge