



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-01014
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Department Counsel  
For Applicant: *Pro se*

March 26, 2020

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On June 24, 2019, 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 30, 2019, October 7, 2019, and December 3, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 10, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 14, 2020, and the hearing was convened as scheduled on March 6, 2020. The Government offered seven exhibits,

referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant offered five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on March 16, 2020.

### **Findings of Fact**

Applicant is 47 years old. He has a high school diploma. He is employed by a defense contractor as a Plant Maintenance Worker. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The SOR alleges that Applicant incurred delinquent debt totaling in excess of approximately \$21,000, which include medical bills, and several other collection accounts. In his answer, he admits to allegations 1.a., 1.i., and 1.j., and denies the others listed in the SOR. Credit reports of the Applicant dated September 16, 2016; January 24, 2019; and January 31, 2020, confirm this indebtedness. (Government Exhibits 5, 6, and 7.)

Applicant began working for his current employer in November 2016. When he applied for the job, he also applied for a security clearance. Applicant testified that he first learned about his delinquent debt in March 2018 when he received a copy of his credit report from the debt resolution company. (Tr. p. 44.) Applicant testified that because he is not good with computers, he had his sister electronically input all of the information in response to the questions on the application for him. She sat at the computer and he sat next to her while they went through the questions on the application.

Applicant explained that in 2009, he underwent a surgery and that his medical insurance benefits covered the costs. His employer at the time was charging him for insurance and deducting the regular payments for coverage out of each paycheck. Applicant contends that his insurance company was supposed to cover his medical bills. When Applicant learned of these financial delinquencies on his credit report in March 2018, he hired a credit repair service to assist him in resolving these debts. (Applicant's Exhibit A.) Since retaining the services of the debt resolution company he has been able to successfully dispute the debt that was listed as delinquent on his credit report. Each of the delinquent medical debts have been removed from his credit report and are no longer owing.

Applicant provided a copy of his most credit report that combines information from all three credit reporting agencies dated February 28, 2020. This report shows that each of these debts listed on the SOR, except one, no longer show owing. (Applicant's Exhibits A and C.)

1.a. A delinquent telephone account was placed for collection in the approximate amount of \$1,103. Applicant settled the debt for \$604 on March 2, 2020. The debt is no longer outstanding. He was unable to get a receipt from the creditor, but did provide a copy of his bank records showing the payment. The debt has also been removed from his credit report. (Tr. p. 28 and Applicant's Exhibits A and B.)

1.b. A delinquent medical account was placed for collection in the approximate amount of \$401. This debt is still under dispute. (Tr. pp. 47-48.)

1.c. A delinquent medical account was placed for collection in the approximate amount of \$2,647. Applicant settled the debt for \$409.35 on March 2, 2020. He was unable to obtain a receipt from the creditor, but did provide a copy of his bank records showing the payment. The debt has been removed from his credit report. (Tr. p. 48-49 and Applicant's Exhibits A and B.)

d. A delinquent medical account was charged off in the approximate amount of \$2,064. This debt has been disputed and removed from his credit report. (Tr. p. 49 and Applicant's Exhibits A and C.)

1.e. A delinquent medical account was placed for collection in the approximate amount of \$12,880. This debt has been disputed and removed from his credit report. (Tr. p. 49 and Applicant's Exhibits A and C.)

1.f. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$630. This debt has been disputed. It has not yet been removed from Applicant's credit report. (Tr. p. 49 and Applicant's Exhibits A and C.)

1.g. A delinquent cable service account was placed for collection in the approximate amount of \$244. This debt has been disputed and removed from his credit report. (Tr. p. 49-50 and Applicant's Exhibits A and C.)

1.h. A delinquent medical account was placed for collection in the approximate amount of \$351. This debt has been disputed and removed from his credit report. (Tr. p. 51 and Applicant's Exhibits A and C.)

1.i. A delinquent debt was placed for collection in the approximate amount of \$513. This debt has been disputed and removed from his credit report. (Tr. p. 52 and Applicant's Exhibits A and C.)

1.j. A delinquent debt was placed for collection in the approximate amount of \$432. This debt has been disputed and removed from his credit report. (Applicant's Exhibits A and C.)

#### **Guideline E – Personal Conduct**

On August 15, 2016, Applicant completed an electronic questionnaire for investigations processing (e-QIP). In response to Section 22 of the questionnaire,

Applicant was asked if in the last seven years has he been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him; has he been arrested by any police officer, sheriff, marshal or any other type of law enforcement officer; has he been charged, convicted, or sentenced of a crime in any court, or has he been or is he currently on probation or parole? Applicant answered, "NO." This was a false answer. In September 2009, Applicant was arrested on a warrant for Failure to Appear for Trafficking in Illegal Drugs. In July 2011, he was arrested and charged with Battery/Domestic Violence. In June 2013, he was cited (not arrested) and charged with Possession of Marijuana and Unlawful Possession of Drug Paraphernalia.

Section 22 of the questionnaire asked the Applicant if he has ever been charged with any felony offense; and/or has he ever been charged with an offense involving alcohol or drugs? Applicant answered, "NO." This was a false answer. Applicant failed to disclose his arrest in February 1994 for Trafficking in Illegal Drugs. Applicant testified that the charge was dropped from a felony to a possession charge. Even so, this is still a drug-related charge.

Section 23 of the questionnaire asked the Applicant if in the last seven years has he illegally used any controlled substances? The Applicant answered, "NO." This was a false answer. Applicant failed to disclose that he used marijuana from approximately 1990 through at least February 2016.

Applicant testified that he would never answer any of the questions on the security clearance application dishonestly, nor would he intentionally try to conceal his drug involvement or criminal history or any information from the Government. He adds that when asked by the investigator about his past illegal drug use and criminal history he admitted everything. He admits, however, that he did not take the whole process as seriously as he should have. Applicant explained that he is not good with computers and so he asked his sister to help him with the application. At the time he completed the application, he still worked two jobs, and so he would meet his sister in the middle of the night when he got off work and they would work on the application together. His sister sat at the computer and input the information. He sat next to her and assumed she was inputting the correct information. He states that he did not have control of the computer. He also assumed she was inputting the information truthfully. (Tr. pp. 61-62.) Applicant realizes now that he should have checked what his sister put down on his application before signing it.

Applicant received a "Bravo Award" from his company on February 27, 2020, acknowledging his excellent performance. (Applicant's Exhibit D.)

A letter of recommendation from his supervisor dated February 10, 2020, indicates that Applicant is a dedicated, responsible, trustworthy employee. He has an outstanding work ethic and his teamwork is greatly valued and recognized by the company. (Applicant's Exhibit E.)

A letter from the Pastor at his church dated March 3, 2020, who has known the Applicant for the past twenty years, states that Applicant has strong morals and values.

He is a man of integrity, talent, and is developing Godly character. He is intelligent, caring and responsible. (Applicant's Exhibit E.)

Applicant has been actively involved in his community by working with the youth in his church by showing them leadership and guidance for the past fifteen years. (Tr. p. 44.)

Applicant states that he has learned from his mistakes and he will never allow his carelessness to happen again. (Answer to SOR dated July 30, 2019.)

## **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. One is potentially applicable in this case:

(c) a history of not meeting financial obligations.

Applicant underwent a surgery in 2009. He states that his medical insurance company was responsible to pay the bills. There is no evidence in the record to the contrary. Accordingly, his insurance should have paid his medical bills and they did not. These delinquent debts were placed in collections and listed as delinquent on Applicant's credit report. 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

When Applicant became aware of the delinquent debts listed on his credit report that were not rightfully his responsibility, he took action. He acted responsibly, and hired a debt resolution company to help resolve them. They were successfully disputed, and/or paid. All but one has been removed from his credit report. Applicant has been responsible and has shown good judgment and reliability with respect to his finances. Accordingly, the financial consideration security concern has been mitigated. This guideline is found for Applicant.

### **Guideline E - Personal Conduct**

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions are applicable. Even though Applicant did not input the information himself on his security clearance application, he has the duty and responsibility to ensure that the information provided to the Government is accurate and



truthful to the best of his ability. Applicant's sister electronically inputted the information and Applicant should have checked and reviewed what she inputted to ensure its accuracy. Applicant was careless and did not take the process seriously. He signed the document and in doing so attested to its truthfulness. Applicant answered, "NO," to questions on his security clearance questionnaire concerning his police record, and illegal drug abuse, which he should clearly have admitted. There is no excuse for this dishonesty or carelessness and clearly calls his character into question. In either case, considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and trustworthiness. To be entrusted with the privilege of holding a security clearance, one is expected to be honest and truthful at all times, and to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant has not demonstrated this awareness. By failing to answer these questions correctly on the security clearance application, his conduct does not show honesty, integrity, good judgment or reliability. At this time, Applicant does not meet the qualifications for access to classified information. Accordingly, the personal conduct security concern has not been mitigated. This guideline is found against Applicant.

### **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 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:	FOR APPLICANT
Subparagraphs 1.a. through 1.j.	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.c.	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