



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



In the matter of: )  
)  
) ISCR Case No. 19-02032  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

January 27, 2020

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On October 3, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 October 21, 2019. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On November 18, 2019, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and received by him on November 25, 2019. 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 submitted no response to the FORM. Applicant did not object to Government Items 1 through 7, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 7.

### **Findings of Fact**

Applicant is 47 years old. He has an Associate's degree. He is employed by a defense contractor as a Graphic Artist. 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 debt totaling approximately \$62,000 which include educational loans, medical bills, and numerous charge-off accounts. He also failed to file his Federal and state income tax returns on a timely basis for tax years 2015, 2016, and 2017. In his answer, he admits each of the debts listed in the SOR, but provides no further details. Credit reports of the Applicant dated May 12, 2011; December 18, 2018; June 4, 2019; and November 8, 2019, confirm this indebtedness. (Government Exhibits 4, 5, 6 and 7.) Applicant began working for his current employer in November 2013. In his security clearance application dated September 20, 2018, Applicant indicates that his household went from two incomes to one at some point, which obviously contributed to his financial problems. There is nothing more said about his finances to glean any further understanding of his situation.

Applicant served on active duty in the U.S. Army for four years from June 1991 to June 1995, and received an honorable discharge.

For some unknown reason, Applicant failed to file his Federal and state income tax returns for tax years 2015, 2016 and 2017 in a timely fashion. He now claims that at the time he submitted his answer to the SOR, these returns were being filed, however, he provides no documentary evidence to support this assertion.

Applicant provides no explanation as to how or why he accrued this delinquent debt. The following delinquent debt remains owing:

1.a. A delinquent educational debt was placed for collection in the approximate amount of \$10,014.

1.b. A delinquent educational debt was placed for collection in the approximate amount of \$9,605.

1.c A delinquent debt owed to a creditor was charged off in the approximate amount of \$7,379.

1.d. A delinquent debt owed to a creditor was charged off in the approximate amount of \$6,475.

1.e. A delinquent debt owed to a creditor for an account placed for collection in the approximate amount of \$5,954.

1.f. A delinquent debt owed to a creditor for an account placed for collection in the approximate amount of \$3,019.

1.g. A delinquent medical account in the approximate amount of \$2,285.

1.h. A delinquent debt owed to a creditor for an account that was charged off in the approximate amount of \$1,790.

1.i. A delinquent debt owed to a creditor for an account that was charged off in the approximate amount of \$1,742.

1.j. A delinquent educational debt was placed for collection in the approximate amount of \$1,590.

1.k. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$683.

1.l. A delinquent medical debt was placed for collection in the approximate amount of \$363.

1.m. A delinquent educational debt was placed for collection in the approximate amount of \$5,789.

1.n. A delinquent educational debt was placed for collection in the approximate amount of \$4,745.

1.o. A delinquent educational debt was placed for collection in the approximate amount of \$1,287.

1.p. A delinquent debt was placed for collection in the approximate amount of \$1,664.

## 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. Four are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant incurred significant delinquent debt that he has not paid. At this time there is insufficient information in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. There is no evidence in the record to show that any regular monthly payments of any sort are being made toward his debts, or that even one of them has been paid off. 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant mentions in his security clearance application that his two income household was reduced to one income, but provides no further details about this situation. Without more information, the record is void of mitigation. There is no evidence in the record to show that circumstances beyond the Applicant's control contributed to his financial difficulties. There is nothing in the record to show how or why Applicant became so delinquently indebted. Nor is there evidence to show that Applicant has made any effort to resolve his debts. Applicant has been gainfully employed since November 2013 and remains excessively indebted. None of the mitigating conditions apply.

### **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 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
Subparagraphs 1.a.: through 1.r.	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