



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



In the matter of:)
)
) ISCR Case No. 19-03873
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Department Counsel
For Applicant: *Pro se*

August 6, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 6, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 March 17, 2020. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On May 14, 2020, 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 May 28, 2020. 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 submit a 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 45 years old and married. He has a bachelor's degree and military training. He is employed by a defense contractor and 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.

Under Guideline F, the SOR alleges that Applicant failed to file his Federal income tax returns for tax years 2016 and 2017. He also incurred delinquent debt owed to two separate creditors on accounts that were past due or placed in collection totaling in excess of \$40,000. In his answer, Applicant admits each of the debts listed in the SOR. Applicant's credit report dated October 17, 2017, confirms this indebtedness. (Government Exhibit 6.)

Applicant served on active duty in the United States Marine Corps from 1995 through 1999 and with the Navy from 2000 from 2012. Applicant was discharged from the Navy with only ten days of notice because he was unable to pass the required physical fitness test. Applicant stated that he cashed out his Navy retirement account in the amount of \$21,000, and used the severance pay he received in the amount of \$13,695 for living expenses. Following his military discharge, he was unemployed for approximately four years. Applicant lived with his wife (a Japanese permanent resident) in Japan. He states that he was supported by his wife, GI Bill Benefits, and student loans, as he attended college online to obtain his bachelor's degree. Since July 2016, Applicant has been working on a full-time basis. (Government Exhibit 5.) In his security clearance application dated July 2017, Applicant indicated that he was at that time seeking financial counseling. (Government Exhibit 4, p. 34.)

During his personal subject interview in June 2019, as part of his security clearance background investigation, Applicant explained that after being discharged from the military he did not have a plan for employment. He and his spouse used all of their funds to pay rent, utilities, buy food and day to day expenses. He states that he did not intentionally stop paying on his accounts, he simply could not afford to pay them. Applicant also explained to the investigator that he failed to file his Federal income tax returns for tax years 2016 and 2017, because as a single filer, he could not afford to pay the \$400 he estimated in taxes. He stated that he planned to file and pay all taxes in full

by July 2020. He further stated that he has no intention of failing to file his income tax returns or paying his Federal taxes in the future. (Government Exhibit 5.)

In regard to his delinquent debt, Applicant opened up several lines of credit that he has not paid. He currently owes the Navy Federal Credit Union for a number of delinquent accounts, they include a personal loan and several credit cards totaling in excess of \$40,000. He states that he used this money to pay rent, buy food, gas and pay day to day living expenses. He stated that he plans to pay these accounts by June 2024. (Government Exhibit 5.)

Applicant also admitted that he owes a jewelry store approximately \$3,026. At the time the SOR was issued, he was approximately \$1,080 past due. (Government Exhibit 3.) He explained that he purchased a wedding ring for his spouse. He states that he will pay this account by June 2024. As of June 2019, the date of the report of the personal subject interview of Applicant, Applicant had not received any type of financial counseling. (Government Exhibit 5.)

The following delinquent debts in the SOR remain owing and are of security concern:

- b. A delinquent debt owed to a jewelry store is past due in the amount of \$1,080 with a total balance of \$3,026. Applicant admits the debt. (Government Exhibit 3.) Applicant provided no documentary evidence to show that he has addressed the debt in any fashion. The debt remains owing.
- c. A delinquent debt owed to a credit union was placed for collection in the approximate amount of \$5,272. Applicant admits the debt. (Government Exhibit 3.) Applicant provided no documentary evidence to show that he has addressed the debt in any fashion. The debt remains owing.
- d. A delinquent debt owed to a credit union was placed for collection in the approximate amount of \$10,474. Applicant admits the debt. (Government Exhibit 3.) Applicant provided no documentary evidence to show that he has addressed the debt in any fashion. The debt remains owing.
- e. A delinquent debt owed to a credit union was placed for collection in the approximate amount of \$7,787. Applicant admits the debt. (Government Exhibit 3.) Applicant provided no documentary evidence to show that he has addressed the debt in any fashion. The debt remains owing.
- f. A delinquent debt owed to a credit union was placed for collection in the approximate amount of approximately \$5,683. Applicant admits the debt. (Government Exhibit 3.) Applicant provided no documentary evidence to show that he has addressed the debt in any fashion. The debt remains owing.
- g. A delinquent debt owed to a credit union was placed for collection in the approximate amount of \$10,598. Applicant admits the debt. (Government

Exhibit 3.) Applicant provided no documentary evidence to show that he has addressed the debt in any fashion. The debt remains owing.

- h. A delinquent debt owed to a credit union was placed for collection in the approximate amount of \$1,503. Applicant admits the debt. (Government Exhibit 3.) Applicant provided no documentary evidence to show that he has addressed the debt in any fashion. The debt remains owing.

It is noted that the debts set forth above do not appear on Applicant's most recent credit report. (Government Exhibit 7.) Under the particular circumstances of this case, their absence from the credit report is not affirmative evidence that the debts have been resolved. According to the Fair Credit Reporting Act, in some cases, derogatory accounts may fall off of the credit reports after seven years. This does not mean that the debt is no longer owing.

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;

- (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 has a history of financial delinquencies dating back to at least 2012. He opened up several lines of credit that he has not paid since 2012-2013. Today, he still owes this debt and remains excessively indebted. 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 pay 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. 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.

It is noted that Applicant was released from military service under sudden and unexpected circumstances. This situation was beyond his control and contributed to his financial difficulties. Following this, he was unemployed or underemployed for about four years. For the past four years, he has been working full-time. Even still, Applicant has not filed his Federal income tax returns for tax years 2016 and 2017. There is nothing in the record to show that any progress has been made toward resolving his delinquent debts. Applicant only offers that he will pay the accounts by 2024. He has not shown the requisite good judgment, reliability, or trustworthiness necessary to qualify for access to classified information, nor has he made a good faith effort to repay his creditors or otherwise resolve the debt. Under the circumstances, he has not acted reasonably and responsibly. AG ¶ 20(b) does not provide full mitigation here and the others are not applicable.

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.h.	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