



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 19-03680 |
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| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

October 8, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 11, 2018, Applicant submitted a security clearance application (e-QIP). (Item 3.) On March 6, 2020, 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 May 7, 2020. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 22, 2020, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing nine exhibits, was sent to the Applicant and received on July 24, 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 responded to the FORM on a date uncertain, and submitted a five page document, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. DOHA assigned the case to me on September 22, 2020. Items 1 through 9 are admitted into evidence and hereinafter referred to as Government Exhibits 1 through 9.

Findings of Fact

Applicant is 35 years old. He is divorced and has two daughters with his ex-wife, and a recent son with a girlfriend. He has a high school diploma. Applicant has no prior military service. 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 seven delinquent debts, totaling approximately \$18,464, consisting primarily of consumer debt, under this guideline. In his answer to the SOR, Applicant admits all of the allegations, except allegation 1.b., asserting that the debt has been settled. A credit report of the Applicant dated October 17, 2018, confirms that at that time the debts were owing. (Government Exhibit 4.)

Applicant's security clearance background investigation revealed that Applicant's financial difficulties were due to gambling, marital separation and divorce, medical bills related to the birth of a child, low income, and bad financial decisions. (Government Exhibit 8.) Applicant's security clearance application dated September 2018, states that Applicant's financial difficulties from September 2013 to June 2018 resulted from gambling related to drinking alcohol. Applicant stated that, "I put all of those things behind me because I decided to make changes in my life for the better." (Government Exhibit 3.) Applicant also stated that he retained Lexington Law firm to help resolve his debts, but recently confirmed that he stopped using the services in March 2019. (Government Exhibit 8.)

The following delinquent debt listed in the SOR is of security significance:

1.a., Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$5,867. Applicant states that he is working on paying off the debt. At this time, the debt remains outstanding.

1.b., Applicant is indebted to the state for child support, an account that was placed for collection in the approximate amount of \$4,960. Applicant claims that the debt has been settled. He submitted a copy of a check in the amount of \$2,482.92 dated January 23, 2020, issued by an Attorney Trust Account to the Treasurer of his state regarding Applicant. Applicant also contends that the balance owed of \$2,482.92 was garnished on a bi-weekly basis in the amount of \$150 or \$300 monthly to resolve the debt. (Government Exhibit 2.) This debt is being or has been resolved.

1.c. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$4,793. Applicant settled the debt in the amount of \$1,438. His last payment of \$312.67 was received by the creditor on June 20, 2020. (Applicant's Exhibit A.) This debt has been resolved.

1.d. Applicant is indebted to a creditor for a medical account that was charged off in the approximate amount of \$1,245. Applicant has provided a receipt for emergency medical services rendered on May 9, 2018. The receipt shows that there is a zero balance owed on the account as of August 21, 2020. (Applicant's Exhibit A.) This debt has been resolved.

1.e. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$717. Applicant has provided a receipt dated June 22, 2020, showing that Capital One Bank was the original creditor. The receipt shows that there is a zero balance owed on the account as of June 22, 2020. (Applicant's Exhibit A.) This debt has been resolved.

1.f. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$586. Applicant has provided a receipt dated May 28, 2020, showing that LVNG Funding is the current owner of the debt and that the account was settled in full on May 13, 2020. (Applicant's Exhibit A.) This debt has been resolved.

1.g. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$296. Applicant states that he is working on paying off the debt. At this time, the debt remains outstanding.

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. Two are possibly applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Since Applicant decided to stop gambling and drinking alcohol, he has been working to pay off his delinquent debts and has incurred no new debt. He has settled or paid in full all but two of his seven outstanding debts. At this point, however, he still remains indebted to two creditors owing in excess of \$6,000. He has presented no evidence to show that he has done anything to resolve these two debts. The record is also void of any mitigation concerning his level of trustworthiness and reliability. Under the circumstances, Applicant has failed to demonstrate that he is eligible for a security clearance.

The following mitigating conditions under the Financial Considerations guideline 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, or a death, divorce, or separation), 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.

Applicant's history shows that he encountered some circumstances beyond his control that contributed to his financial indebtedness, like his marital separation and

divorce. He also made some poor decisions that exacerbated his financial difficulties such as gambling and drinking. Recently, Applicant has been working on resolving his past delinquent debts. He has either paid off or settled five of the seven debts listed in the SOR, and hopefully soon in the future, will begin to work to resolve the remaining two debts. At this point, he continues to owe in excess of \$6,000 toward the remaining two debts. Applicant has not resolved his indebtedness enough to show that he is fiscally responsible. Accordingly, eligibility for a security clearance is denied.

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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a., and 1.g: | Against Applicant |
| Subparagraphs 1.b., through 1.f. | For 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