



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-00615  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

March 23, 2021

**Decision**

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Lokey Anderson, Darlene D., Administrative Judge:

On June 25, 2019, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 2.) On May 18, 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. 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 responded to the SOR (Answer) on a date uncertain. (Government Exhibit 1.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on December 18, 2020. A complete copy of the File of Relevant Material (FORM), containing five Items was received by Applicant on January 12, 2021. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a three-page response to the FORM within the 30-day period. Applicant’s response was admitted

into the record without objection. DOHA assigned the case to me on February 19, 2021. Hereinafter, all reference to Government Items will be referenced as Government Exhibits.

### **Findings of Fact**

Applicant is 35 years old, and divorced. He has one child who is two years old. He has a high school diploma. He is employed by a defense contractor in a Shipboard Temporary Services position. 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 nine delinquent debts totaling approximately \$38,557, showing a history of financial problems. Applicant admits each of the allegations set forth in the SOR under this guideline except 1.c. Credit reports of the Applicant dated August 3, 2019; and December 10, 2020, confirm the outstanding debts. (Government Exhibits 4 and 5.) Applicant began working for his current employer in February 2005.

Applicant was married from September 2013 until his divorce in June 2015. He incurred debt that he has not paid. In regard to three debts specifically: 1.d, in the amount of \$5,015; 1.f. in the amount of \$2,586; and 1.i. in the amount of \$613, Applicant believes that he and his ex-spouse are responsible to pay them. He states that he is seeking legal action in order to find her and try and settle those debts. He attributes his divorce and his medical problems to his indebtedness.

In his response to the FORM, Applicant states that he is currently working on his delinquent debt with the help of a credit consultant. He has a fiancé and they hope to purchase a house within the next two years. He and his fiancé are living together, renting a house, she helps pay household bills, and is helping him work on his monthly budget.

The following delinquent debts remains owing:

1.a. A delinquent auto loan was placed for collection in the approximate amount of \$29,160. Applicant states that he currently owns the vehicle and has reached a settlement agreement with the creditor totaling \$8,000. Applicant states that the payment plan requires him to pay \$1,236 monthly for six months. So far, Applicant had made the first good-faith payment of \$580.46. When the last payment is made, he will receive the title to the vehicle. Applicant provided a copy of the settlement offer. (Applicant's Response to the FORM.)

1.b. A delinquent cellular phone debt was placed for collection in the approximate amount of \$513. There is nothing in the record to show that this debt has been resolved. The debt remains owing.

1.c. A delinquent debt was placed for collection in the approximate amount of \$533. Applicant denied this debt. He states that it was opened in error on line and he is disputing it. There is nothing in the record to substantiate his dispute. The debt appears delinquent on his most recent credit report. There is nothing in the record to show that this debt has been resolved. The debt remains owing.

1.d. A delinquent debt was placed for collection in the approximate amount of \$5,015. Applicant believes this is a joint-debt with his ex-spouse and he states that he is currently seeking legal action to find her and serve her with papers. Applicant also states that he has reached out to the creditor but has not received a response. (Applicant's Response to the FORM.) There is nothing in the record to show that his debt has been resolved. This debt remains owing.

1.e. A delinquent debt was placed for collection in the approximate amount of \$60. Applicant claims that he is in contact with the creditor but due to the Covid virus correspondence has been delayed. There is nothing in the record to show that this debt has been resolved. The debt remains owing.

1.f. A delinquent debt owed to a jewelry store was placed for collection in the approximate amount of \$2,586. Applicant believes this is a joint-debt with his ex-spouse and he states that he is currently seeking legal action to find her and serve her with papers. He further states that he is working on making a payment arrangement with the creditor. (Applicant's Response to the FORM.) There is nothing in the record to show that this debt has been resolved. The debt remains owing.

1.g. A delinquent medical debt was placed for collection in the approximate amount of \$52. Applicant admits that the account is delinquent and that he owes the debt. He also states that he paid the debt but has not received documentation to substantiate his payment, as the creditor is behind in this processing. There is nothing in the record to show that this debt has been resolved. The debt remains owing.

1.h. A delinquent medical debt was placed for collection in the approximate amount of \$25. There is nothing in the record to show that this debt has been resolved. The debt remains owing.

1.i. A delinquent credit card account was placed for collection in the approximate amount of \$613. Applicant believes this is a joint-debt with his ex-spouse and he states that he is currently seeking legal action to find her and serve her with papers. He states that he is also currently working on a settlement plan. There is nothing in the record to show that this debt has been resolved. The debt remains owing.

## 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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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. Two are potentially applicable in this case:

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

Applicant incurred delinquent debts that he could not pay. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I have considered each one of them set forth below:

- (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 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.

Applicant expresses a willingness to pay off his delinquent debt, but has not provided documentation that he has done so. Except for one debt in the SOR that Applicant has settled and made a first good-faith payment toward, Applicant has not done anything more to address his delinquent debts. There is no evidence in the record to show that he has made any of the monthly payments required to follow through with the settlement agreements. All of the other debts set forth in the SOR remain owing. In fact, even debts as small as \$25, \$52, and \$60 have not been paid. This does not show good judgment or a good faith effort. Applicant claims that he is working with a credit consultant but has provided no evidence to show financial progress. Applicant has not demonstrated that his financial problems have been resolved, or are being resolved, or that they are unlikely to recur. The mitigating conditions do not apply. Accordingly, this guideline is found for 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has not sufficiently addressed his

debts or made a good faith effort to resolve them. He claims that he incurred the debt because of his divorce. In May 2020, when he answered the SOR, he stated that he was at that time setting up payment plans with his creditors. Since then, nothing of the sort has been accomplished. Furthermore, the largest of his debts is the automobile loan which he incurred three years after the divorce. This more likely shows that Applicant has lived beyond his means during his earlier marriage and following his divorce. Applicant remains excessively indebted. At this time, he has not demonstrated that he can be trusted with the national secrets. This is not an individual with whom the Government can be confident to know that he will always follow rules and regulations, and do the right thing, even when no one is looking. He is not qualified for access to classified information, nor is it clear that the information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many 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.i.:	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