



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01759
)
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Department Counsel
For Applicant: *Pro se*

June 7, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 4, 2020, 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 responded to the SOR (Answer) on November 10, 2020. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on January 28, 2021. A complete copy of the File of Relevant Material (FORM), containing six Items was received by Applicant on February 18, 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 no response to the FORM within the 30-day period. DOHA assigned the case to me on May 25, 2021. All reference to Government (Items) will hereinafter be referred to as (Government Exhibits).

Findings of Fact

Applicant is 64 years old and married with three adult children. He has an Associate's degree. He is employed by a defense contractor as a Configuration Control/Data Management. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The SOR alleges that Applicant incurred nine delinquent debt totaling in excess of approximately \$55,500, consisting mainly of credit card accounts. In his answer, he admits each of the allegations listed in the SOR. Credit reports of the Applicant dated October 2, 2019; and June 29, 2020, confirm this indebtedness. (Government Exhibits 5 and 6.)

Applicant served in the United States Air Force from November 1976 to April 1984, when he was honorably discharged. He began working for his current employer in February 2018. Applicant completed a security clearance application dated September 24, 2019. (Government Exhibit 3.)

For many years, Applicant lived beyond his means and spent money he did not have. He opened as many as 23 credit cards, ultimately falling behind on his payments. He became so overextended and overwhelmed by his excessive credit card debt, and in order to avoid bankruptcy, in May 2018 he hired a debt repair service to assist him in reducing and resolving his debts. The record lacks specificity, but there is some evidence that Applicant pays \$1,978 monthly to a financial repair service to address his delinquent debts. (Government Exhibit 2.) Applicant states that a financial repair service has settled some of the debts and paid-off others. (Government Exhibit 3.) Applicant also states that he has now gotten rid of his credit cards and he plans to pay for everything he gets in the future with cash. He also states that he is now living within his means. (Government Exhibit 2.)

The following debts listed in the SOR became delinquent:

1.a. A delinquent account was placed for collection in the approximate amount of \$7,440. Applicant states that he has negotiated and settled the account owed to the creditor. He also states that he began a payment plan in October 2019. Applicant claims that the account is no longer delinquent. (Government Exhibit 2.)

1.b. A delinquent account was charged off in the approximate amount of \$5,618. Applicant states that the account remains delinquent. Applicant further states that he is

working with the financial assistance company to negotiate a settlement to resolve the debt. (Government Exhibit 2.) The account remains delinquent and owing.

1.c A delinquent account was charged off in the approximate amount of \$5,618. Applicant states that he has negotiated and settled the account owed to the creditor. He also states that he began a payment plan on November 5, 2018. Applicant claims that the account is no longer delinquent. (Government Exhibit 2.)

d. A delinquent account was charged off in the approximate amount of \$8,558. Applicant states that the account remains delinquent. Applicant further states that he is working with the financial assistance company to negotiate a settlement to resolve the debt. (Government Exhibit 2.) The account remains delinquent and owing.

1.e. A delinquent account was placed for collection in the approximate amount of \$2,806. Applicant states that he has negotiated and settled the account owed to the creditor. He also states that he began a payment plan on August 27, 2020. Applicant claims that the account is no longer delinquent. (Government Exhibit 2.)

1.f. A delinquent account was charged off in the approximate amount of \$15,732. Applicant states that the account remains delinquent. Applicant further states that he is working with the financial assistance company to negotiate a settlement to resolve the debt. (Government Exhibit 2.) The account remains delinquent and owing.

1.g. A delinquent account was charged off in the approximate amount of \$1,890. Applicant states that he has negotiated and settled the account owed to the creditor. He also states that he began a payment plan on February 25, 2019. Applicant claims that the account is no longer delinquent. (Government Exhibit 2.)

1.h. A delinquent account was charged off in the approximate amount of \$2,353. Applicant states that he has negotiated and settled the account owed to the creditor. He also states that he began a payment plan on January 31, 2020. Applicant claims that the account is no longer delinquent. (Government Exhibit 2.)

1.i. A delinquent account was charged off in the approximate amount of \$5,519. Applicant states that the account remains delinquent. Applicant further states that he is working with the financial assistance company to negotiate a settlement to resolve the debt. (Government Exhibit 2.) The account remains delinquent and owing.

Applicant failed to submit documentation to substantiate a payment history of any sort. There are no receipts, proof of payment, letters from creditors or bank statements to show that any payments have been made or what the amounts of the payments were. Applicant did not respond to the FORM, and the record is void of any mitigation that would substantiate financial progress.

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
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or non-payment, or other negative financial indicators.

Applicant lived beyond his means for many years. He became delinquently indebted and unable to afford to pay his bills. 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.

None of the mitigating conditions apply. Applicant became excessively indebted because he spent money he did not have. He opened up as many as 23 credit card accounts and spent money recklessly. When he became so overwhelmed and could no longer handle his finances, in May 2018, he hired a financial repair service to help him. There is nothing in the record since then to show evidence of debt settlement or a payment history. In the event that Applicant is making progress toward resolving his debts, he is commended for it. However, other than his averment, there is no documentary evidence of a payment history to show that Applicant has made progress toward resolving his debts. Even giving him the benefit of the doubt regarding the debts he claims he has paid, he still owes a significant amount of debt that is delinquent. Applicant has failed to show a pattern and practice of paying his bills on time. He remains delinquently indebted to a number of creditors. Accordingly, the financial considerations security concern has not been mitigated. Guideline F 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 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.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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge