



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



In the matter of: )  
)  
) ISCR Case No. 19-00521  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

July 20, 2021

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On April 17, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. 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 May 14, 2019; and July 24, 2019, and requested a hearing before an administrative judge. The case was assigned to me on March 4, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 4, 2021, and the hearing was convened as scheduled on June 17, 2021. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which

were admitted without objection. The Applicant offered five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on July 8, 2021, to allow the Applicant to submit additional supporting documentation. Applicant submitted three additional documents, collectively referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 29, 2021.

### **Findings of Fact**

Applicant is 57 years old. He is married and has seven children. He has an Associate degree in Electronic Engineering. He is employed by a defense contractor as a Satellite Maintainer/Controller. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The SOR alleges that Applicant incurred delinquent debt totaling in excess of approximately \$40,000. His delinquent debt consists of student loans, a credit card, a medical account, and a returned check. In his answer, he admits to allegations 1.a., and 1.b. He claims that he paid allegations 1.c., and 1.e. through garnishment. Allegation 1.d., he cannot answer because he does not know what debt it pertains to. Credit reports of the Applicant dated May 22, 2018; and January 31, 2019 confirm this indebtedness. (Government Exhibits 2 and 3.)

Applicant served on active duty in the United States Army from 1982 to 1994. He then served in the reserves until 1997. Applicant has worked for the same company since 2002, and only management has changed over the years. Applicant has held a security clearance since 2002 without incident. He currently earns about \$60,000 annually, but with regular overtime and bonuses his salary is about \$80,000 annually.

Applicant provides all financial support for his large family, consisting of seven children and his wife. His wife is a stay-at-home mother who cares for the children and maintains the house. All but one of his children live at home. Applicant pays the family bills. He states that it has been a constant financial struggle for him to pay the bills and feed his large family. He was also sending his two oldest children to private school. He admits that he was spending beyond his means. (Tr. p. 51.) Applicant also paid to renovate a home that he and his siblings own.

Applicant attended college, and earned an Associate's degree. To afford to attend college, he obtained student loans totaling about \$30,000. (Tr. p. 30.) After graduating, he began making payments toward his student loans. In 2012, Applicant's identity was stolen, and he lost communications with his creditors. Before the identity theft he would receive bills from the creditors. When his personal information was compromised, the bills stopped coming and he stopped making payments. Applicant

stated that he stopped making payments because he did not know who to pay. (Tr. p. 45.)

On April 4, 2019, a wage garnishment order was issued for delinquent student loans in the amount of \$48,208.44. (Government Exhibit 4.) The garnishment continued until June 2020 when it stopped. Applicant believes that he currently owes about \$40,000 in student loan debt. Applicant submitted a copy of a signed rehabilitation agreement dated January 29, 2021, which allows him to voluntarily resume his student loan payments without garnishment. (Applicant's Post-Hearing Exhibit A.) Department Counsel offered that due to the pandemic, The Care Act provides that student loan payments are temporarily deferred through September 30, 2021. Payments are not required for many accounts, including accounts that are in collections. Individuals are allowed to make voluntary payments that are counted toward repayment, but they are not required to make payments until October 2021.

Applicant also borrowed from his 401k on two separate occasions to make his lease payment on his house. He is currently paying that money back. (Tr. p. 57-58.) He states that at one point, he started working on repairing his credit but he never completed the process. (Tr. p. 31.) Besides the student loan debts, Applicant is not certain about what he owes the other creditors listed in the SOR. He understands that he needs to get a better handle on his finances by contacting his creditors to determine what, if anything, he actually owes them.

The following debts became delinquent:

1.a. Applicant is indebted to the US Department of Education for an account that was placed for collection in the approximate amount of \$18,076. (Government Exhibit 5.) Beginning in March or April 2019, Applicant's wages were garnished in the amount of \$437 monthly to pay this debt and the debt listed in 1.b. In June 2020, the garnishment was stopped. According to the provisions of The Care Act, implemented because of the pandemic, the Applicant is not required to make payments until October 2021. (Tr. pp. 40-41 and 55-56.) This debt is not currently delinquent.

1.b. Applicant is indebted to the US Department of Education for an account that was placed for collection in the approximate amount of \$21,576. (Government Exhibit 5.) Beginning in March or April 2019, Applicant's wages were garnished in the amount of \$437 monthly to pay this debt and the debt listed in 1.a. In June 2020, the garnishment was stopped. According to the provisions of The Care Act, implemented because of the pandemic, the Applicant is not required to make payments until October 2021. (Tr. pp. 40-41.) This debt is not currently delinquent.

1.c Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$2,560. (Government Exhibit 5.) Applicant believes that he paid this debt off through garnishment last year. (Tr. pp. 43-44.) This debt has been paid.

d. Applicant is indebted to a creditor for a medical account placed for collection in the approximate amount of \$154. Applicant does not know the current status of this account. He believes it is a late payment for a medical bill that was supposed to be paid through his insurance. (Tr. p. 51.)

e. Applicant is indebted to a creditor for a returned check that is past due in the approximate amount of \$127. (Government Exhibit 5.) Applicant's wages may have been garnished to pay this debt. Applicant is not sure. (Tr. p. 47.) This debt has been paid.

In addition to the above debts, Applicant states that he has other debts, but that they are not yet delinquent. In December 2020 Applicant had a medical emergency that generated medical bills totaling about \$9,000. (Tr. p. 61.) He is currently in negotiations with the creditor. He also still owes \$4,000 for his wife's prenatal care for the birth of their youngest child. He is also in negotiations with this creditor. (Tr. p. 61-62.) Applicant states that although he does not follow a budget, he is careful to first ensure that he pays his lease and his utilities, his car payment and his other regular monthly bills. Then he tries to pay any outstanding debt, if he can afford to do so. He plans to pay all of his bills. Applicant states that he has never received any financial counseling, and feels that he has been under financial stress to get his bills paid.

Applicant submitted copies of his most recent credit reports dated July 5, 2021. They do not show any delinquent collection accounts. (Applicant's Post-Hearing Exhibit A.)

### **Guideline E – Personal Conduct**

Applicant denies the allegation set forth under this guideline that he intentionally falsified his security clearance application from the Government. Applicant completed a security clearance application dated March 24, 2018. Section 26 of the application, concerning his financial record, asked him, if in the past seven years, has he ever defaulted on any type of loan? . . . Whether in the past seven years, has he ever had bills or debts turned over to a collection agency? . . . Whether in the past seven years, has he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . And, whether in the past seven years, has he been over 120 days delinquent on any debt not previously entered? The Applicant answered, "NO", to these questions. Applicant failed to disclose the delinquencies set forth above under Guideline F.

Applicant states that when he completed the recent, updated application in 2018, he did not deliberately intend to conceal his delinquent debts from the Government. Applicant was asked to expedite the application, and he completed it as quickly as he could. He explained that he did not think that there was much to change on his application, and so he used most of the same template from the previous application of 2012, and only made minor changes that he thought were needed, such as his address. (Tr. p. 36.) He now realizes that he should have spent more time on the application to ensure that every question was answered correctly. Applicant states that during his

background investigation he told the investigator that if anything throws a red flag in this investigation it is his credit report. He told her that he did not know what was on it, but that he knew he had debts at that time. (Tr. p. 40.)

Department Counsel notes, however, that Applicant was not that rushed to complete the application, since he took the time to delete a debt he had previously disclosed in 2012 to a creditor for a delinquent credit card debt in the amount of \$10,000. (Tr. p. 37.)

Letters of recommendation from Applicant's supervisor and coworkers attest to his good character. Applicant is well respected among his peers. He is described as a dedicated employee and a hard worker. Over the years, Applicant has been promoted from an entry level trainee to a supervisory position on his work shift. He is self-motivated, positive, trustworthy, and reliable. His work product consistently "exceeds expectations." He is recommended for a security clearance. (Applicant's Exhibit E.)

## **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. One is potentially applicable in this case:

(c) a history of not meeting financial obligations.

Applicant has a history of financial hardship. He is trying to support his large family on one income. He is having problems meeting his needs. He follows no set budget, and has never received any financial counseling. 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.

Applicant has been paying his delinquent debts, although some through garnishment. His most recent credit reports do not show any delinquent collection accounts. He has made a good-faith effort to resolve his debts and has been successful. Accordingly, the financial consideration security concern has been mitigated. This guideline is found for Applicant.

### **Guideline E - Personal Conduct**

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions are applicable. Applicant knew at the time he completed the security clearance application on March 24, 2018, that he had delinquent debt. It was his duty and responsibility to ensure that the information provided to the Government is accurate and truthful to the best of his ability. Even if Applicant was rushing to get the application submitted to his management, he took the time to delete a debt that he had listed on his previous security clearance application in 2012. This



shows that he reviewed the question carefully enough to make this change, and that he knew he had delinquent debts at the time he completed the application. Applicant was also careless by not taking time to review each question carefully before submitting the application to the Government. Applicant signed the application, and in doing so, attested to its truthfulness. Applicant answered, "NO," to questions on his security clearance questionnaire concerning his financial record, which he should clearly have admitted. There is no excuse for this dishonesty or carelessness, and clearly calls his character into question. Applicant's conduct precludes a finding of good judgment, reliability, and trustworthiness. To be entrusted with the privilege of holding a security clearance, one is expected to be honest and truthful at all times, and to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant has not demonstrated this awareness. By failing to answer these questions correctly on the security clearance application, his conduct does not show honesty, integrity, good judgment or reliability. At this time, Applicant does not meet the qualifications for access to classified information. Accordingly, the personal conduct security concern has not been mitigated. This guideline 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. Applicant is well-respected by his supervisor and coworkers on the job. His work product is exceptional. However, he has been unable to resolve his financial problems, and he has not been candid and truthful on his security clearance application regarding his delinquent debt.

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 Personal Conduct security concern. The Financial Considerations security concern has been mitigated.

### **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:	FOR APPLICANT
Subparagraphs 1.a. through 1.e.	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.	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