



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



In the matter of:)
)
) ISCR Case No. 20-02790
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

October 12, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On December 16, 2020, 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 January 20, 2021, and requested a hearing before an administrative judge. The case was assigned to me on July 14, 2021. DOHA issued a notice of hearing on August 4, 2021, and the hearing was convened as scheduled on August 26, 2021. The Government offered four exhibits, referred to as

Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on his own behalf. The record remained open until close of business on September 16, 2021, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted a sixty-four page document, referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on September 8, 2021.

Findings of Fact

Applicant is 29 years old, and divorced with three children. He has a high school diploma. He is employed by a defense contractor as a Safety Coordinator. 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 alleged that Applicant incurred eight delinquent debts owed to creditors, on accounts that were charged off or placed for collection totaling approximately \$39,490. In his answer, Applicant admits allegations 1.a., 1.f., 1.g., and 1.h. He denies allegations 1.b., 1.c., 1.d., and 1.e. Credit reports of the Applicant dated December 10, 2019; and June 23, 2021, confirm this indebtedness. (Government Exhibits 3 and 4.)

Applicant joined the U.S. Army in 2010, at the age of seventeen, and served as a Combat Medic until he was honorably discharged in 2014. During his military career, he had no disciplinary issues, and held a security clearance without incident. He was married to his high school sweetheart from 2011 to 2014. After leaving the military in 2014, Applicant attended a law enforcement academy using the GI Bill. After graduating with his law enforcement license, he worked for two years as a police officer. He then left the force to pursue different career opportunities.

It was about this time in 2015/2016 that Applicant began to experience financial problems. Although he had employment, he incurred delinquent debts that he did not pay. Applicant attributes most of his financial problems and indebtedness to poor financial management. In 2017, Applicant applied for and started receiving VA disability benefits.

In February 2021, Applicant was laid off from his job with a previous employer. Two weeks later, he was hired by his current employer. A month later, in March 2021, Applicant hired a Credit Repair Service to assist him in resolving his delinquent debt in order to be eligible for a security clearance. (Applicant's Post-Hearing Exhibit A, page

30.) Things were moving slowly so Applicant exhausted his 401k and paid off several of the debts set forth below. (Tr. p. 66.)

The following delinquent debts set forth in the SOR are of security concern:

- a. A delinquent debt owed to a creditor for a personal loan account he took out to purchase a motorcycle was past due in the approximate amount of \$1,761. Applicant states that the account is now closed. He has made no payments towards the debt in many years. The debt remains outstanding. Applicant has hired a Credit Repair Service to address the debt. Accordingly, this allegation is found against the Applicant.
- b. A delinquent debt owed to Child Support Services in the amount of \$3,793 was ten days past due. Applicant made a payment of \$2,715 between April 7, 2021, and April 9, 2021. (Tr. p. 66.) The debt has been paid in full. Applicant asserts that he now has a monthly child support obligation of \$650 that is automatically deducted out of his payroll check. He is current with this account at this time. (Applicant's Post-Hearing Exhibit A, page 8.) Accordingly, this allegation is found for the Applicant.
- c. A delinquent debt owed to a creditor in the amount of \$321 was placed for collection. Applicant paid the debt in the amount of \$320.51 on April 8, 2021. (Tr. p. 66.) The debt has been paid in full. (Applicant's Post-Hearing Exhibit A, page 4.) Accordingly, this allegation is found for the Applicant.
- d. A delinquent debt owed to a cable company for internet equipment in the amount of \$304 was placed for collection. Applicant failed to return the equipment, and paid \$319.33 on April 21, 2021. (Tr. p. 66.) The debt has been paid in full. (Applicant's Post-Hearing Exhibit A.) Accordingly, this allegation is found for the Applicant.
- e. A delinquent debt owed to a Real Estate Management Company in the amount of \$3,534 was placed for collection. Applicant states that he broke his rental lease agreement on his apartment early to pursue better job opportunities. He incurred the costs related to the early move. Applicant made two payments of \$1,779 each on April 21, 2021, and on April 22, 2021. (Tr. p. 66.) The debt has been paid in full. (Applicant's Post-Hearing Exhibit A, page 2.) Accordingly, this allegation is found for the Applicant.
- f. A delinquent debt owed to a bank in the amount of \$6,571 was charged off. Applicant believes this may have been a credit card he did not pay. Applicant does not know the status of this debt. He is planning to have the Credit Repair Service work to resolve it. (Tr. p. 47.) The debt remains outstanding. Accordingly, this allegation is found against the Applicant.
- g. A delinquent debt owed to a bank in the amount of \$5,007 was charged off. Applicant believes this was a credit card that he did not pay. (Tr. pp 51-52.)

Applicant has not told the Credit Repair Service about this debt. (Tr. p. 52.) The debt remains outstanding. Accordingly, this allegation is found against the Applicant.

- h. A delinquent debt owed to a bank in the amount of \$18,199 was charged off. Applicant states that this was for a vehicle that was repossessed after he left the police department. (Tr. pp. 47-51.) The debt remains outstanding. Applicant has not told the Credit Repair Service about this debt. (Tr. p. 53.) Accordingly, this allegation is found against the Applicant.

Applicant testified that he currently brings home about \$2,400 monthly after taxes. His girlfriend now lives with him and shares the household expenses. She earns about \$20 an hour and works full time. After paying his regular monthly expenses, Applicant has about \$100 to \$200 left at the end of every month. (Tr. p. 56.) He intends to pay his past-due delinquent debts, but based upon his current financial budget it is not realistic at this time.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant completed a security clearance application dated November 4, 2019. (Government Exhibit 1.) In response to Section 26, Financial, he was asked, “In the past seven years have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? . . . In the past seven years have you defaulted on any type of loan? . . . In the past seven years have you had bills or debts turned over to a collection agency? . . . In the past seven years, have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . In the past seven years have you been over 120 days delinquent on any debt not previously entered? . . . Are you currently over 120 days delinquent on any debt?” Applicant answered, “No,” and failed to list that he had been delinquent on debts in the past seven years, as noted in Guideline F above.

Applicant testified that he was so negligent with his delinquent debts that he really did not think about them when he answered the questions on the security clearance application. He states that he did not deliberately try to deceive the government by not revealing them, he simply did not think about them at all. (Tr. pp. 58-59.) Applicant knew he had delinquent debts at the time he completed the security clearance application, and was dishonest, careless and negligent by not disclosing them.

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Since 2015/2016, Applicant incurred significant delinquent debt that he has not paid. At this time 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 handle 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 outstanding 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

(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 paid off several of his small debts, and has recently hired a credit repair company to assist him with the others. At this time, he remains excessively indebted and from the evidence presented, he is unable to afford to resolve his significant remaining delinquent debts. None of the mitigating conditions apply. This guideline is found against the 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 below:

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

(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.

Applicant's credit reports reveal that he was very far behind on several accounts at the time he completed the security clearance application in November 2019. This is a classic case of doing nothing to resolve one's delinquent debts for many years, and then when it matters, trying to do everything possible, which is simply not enough. Too little, too late. It can be presumed that Applicant knew about his delinquent debts at the time he completed the security clearance application. Applicant deliberately concealed his financial delinquencies from the Government on this application. There is no excuse for this dishonesty. Deliberately concealing material information from the Government on a security clearance application raises serious questions about one's credibility and trustworthiness. None of the mitigating conditions are applicable. This guideline is found against the 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. Insufficient mitigation has been shown. Accordingly, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a., 1.f., 1.g., and 1.h.	Against Applicant
Subparagraphs 1.b., 1.c., 1.d., and 1.e.	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 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