



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



In the matter of:)
)
) ISCR Case No. 20-00885
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

October 18, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 7, 2018, Applicant submitted a security clearance application (e-QIP). (Item 3.) On June 19, 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 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on March 14, 2021. (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 July 1, 2021. A complete copy of the File of Relevant Material (FORM), containing ten Items was received by Applicant on July 8, 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. DOHA assigned the case to me on September 30, 2021. Items 1 through 10 will hereinafter be referred to as Government Exhibits 1 through 10.

Findings of Fact

Applicant is 44 years old and married with four sons, two of whom have passed away. He has a high school diploma and military training. He is employed by a defense contractor as a Field Mechanic. 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 alleges that the Applicant is indebted to the state and Federal Government for delinquent tax owed for years 2012 through 2015, failure to file his state and Federal income tax returns for tax years 2016 and 2017, and sixteen delinquent debts owed to creditors totaling approximately \$106,125. Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated October 24, 2018; September 5, 2019; January 7, 2021; and June 29, 2021, confirm the indebtedness. (Government Exhibits 4, 5, 6, and 7.)

Applicant served in the U.S. Marine Corps from March 1996 to March 2001, and received an honorable discharge. (Government Exhibit 3.) Applicant began working for his current employer in November 2016. He has had consistent employment since then, with no period of unemployment.

In his answer to the SOR, Applicant attributes his financial problems to the emotional, mental, and physical aftermath of the death of two of his sons in 2012. Evidence in the record suggests that Applicant's financial problems began prior to and were unrelated to his sons deaths, as a \$42,463 Federal tax lien was entered against Applicant in March 2012. Applicant states that since then, his wife has been unable to return to the workforce full time. Applicant has been and continues to be the household's primary breadwinner. In 2013, through no fault of his own, his employment contract changed and drastically recued his income, but not the taxes owed. Over the past nine years, Applicant has consistently been unable to meet his financial obligations. The following delinquent debts set forth in the SOR are of security concern:

1.a. A delinquent judgment entered against the Applicant on October 13, 2006, is owed to a County in the amount of \$768 and remains owing.

- 1.b. A delinquent judgment entered against the Applicant on September 8, 2016, is owed to a Country in the amount of \$912 and remains owing.
- 1.c. Applicant failed to pay his Federal income tax for tax years 2012 through 2015.
- 1.d. Applicant failed to file his Federal income tax returns for tax years 2016 and 2017.
- 1.e. Applicant failed to pay his state income tax for tax years 2012 through 2015.
- 1.f. Applicant failed to file his state income tax returns for tax years 2016 and 2017,
- 1.g. A delinquent debt is owed to a credit union for an account that was charged off in the approximate amount \$24,180. The debt remains outstanding.
- 1.h. A delinquent debt is owed to a credit union for an account that was charged off in the approximate amount of \$20,071. The debt remains outstanding.
- 1.i. A delinquent debt is owed to a credit union for an account that was charged off in the approximate amount of \$12,326. The debt remains outstanding.
- 1.j. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$8,533. The debt remains outstanding.
- 1.k. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$6,573. The debt remains outstanding.
- 1.l. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$6,430. The debt remains outstanding.
- 1.m. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$5,595. The debt remains outstanding.
- 1.n. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$5,303. The debt remains outstanding.
- 1.o. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$2,571. The debt remains outstanding.
- 1.p. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$456. The debt remains outstanding.
- 1.q. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount \$213. The debt remains outstanding.
- 1.r. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$123. The debt remains outstanding.

1.s A delinquent debt is owed to a creditor for a mortgage account that was past due in the amount of \$2,150. The account is in foreclosure status with a total loan balance owed in the approximate amount of \$19,486. The debt remains outstanding.

1.t. A delinquent debt is owed to a credit union for an account that was charged off in the approximate amount of \$9,927.

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. 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 or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's delinquent debts include \$80,000 in consumer debt. He also failed to file his state and Federal income tax returns in a timely basis for various years. In addition, he failed to pay his state and Federal income tax for various tax years. His back taxes total approximately \$26,000. His total indebtedness currently exceeds \$106,000. The evidence is sufficient to raise the above disqualifying conditions.

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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant is delinquently indebted to each of the creditors set forth in the SOR. He also failed to file his Federal and state income tax returns required by law. He states that his employment contract change has reduced his income, and he has struggled to pay his debts. It is unclear why he has not filed the Federal and state income tax returns in question. In any case, Applicant failed to respond to the FORM, and has provided no evidence in mitigation. He has made no effort to resolve his delinquent debt. He has not shown that he has filed the income tax returns in question. Given his experience and military background, Applicant is aware of the legal requirement to file annual Federal and state income tax returns and pay Federal and state taxes in a timely fashion. Applicant simply may not be able to afford to pay his debts. In this instance, inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. Accordingly, Applicant does not meet the requirements to access classified information.

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

