



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



In the matter of:)
)
) ISCR Case No. 20-02504
)
)
Applicant for Security Clearance)

Appearances

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

November 4, 2021

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On February 20, 2019, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On January 14, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), 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; 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 answered the SOR on June 21, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 2, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on August 26, 2021, and the hearing was convened as scheduled on October 6, 2021. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection. Applicant

testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 19, 2021.

Findings of Fact

Applicant is 38 years old, and divorced with two children. He has a Bachelor's degree in Product Management. He is employed by a defense contractor as a Field Service Representative. 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 twelve delinquent debts totaling approximately \$56,203, showing a history of financial problems. Applicant denied each of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated March 2, 2019; October 5, 2020; and July 20, 2021, confirm that at one time each of the debts were outstanding. (Government Exhibits 4, 5 and 6.) Applicant began working for his current employer in November 2018.

Applicant served in the U.S. Marine Corps Reserves from 2008 to 2011. While in the military he held a security clearance without incident.

After separating from the military, Applicant attended a university from 2011 to 2015. He took out both Government and private student loans to pay for his education. Applicant borrowed approximately \$12,000 each year for four years totaling about \$45,000 in student loans. (Tr. p. 29.) After finishing his bachelor's degree, Applicant intended to pursue a Master's degree in Mechanical Engineering. At that time, he learned, to his disappointment, that his bachelor's degree credits would not transfer to any other university, as the university he attended was under investigation for misleading and predatory practices. It was about this time that Applicant also learned from other students that due to this situation he might qualify for complete forgiveness of his student loan debt. Applicant did not make any payments toward his student loans under the assumption that the situation would work itself out. In 2019, Applicant thought his student loans had been forgiven as he did not see them showing delinquent on his credit report. At some point he determined that the private loans he had taken out showed a zero balance owing, but the Government loans still showed owing. (Tr. p. 34.) In 2020, after receiving the SOR, Applicant was advised by the Department of Education that he needed to file a specific application for forgiveness of his student loans known as the "Borrowers Defense Repayment Application" because of the university's misleading and predatory practices. (Applicant's Exhibit A, and Tr. p. 32.)

Applicant submitted the required application and the Department of Education approved his claim for discharge of his Federal student loan debt. (Applicant's Exhibit B.)

1.a. through 1.h of the SOR were delinquent Government student loans that had been placed in collections in the approximate amounts of \$10,213; \$8,885; \$6,682; \$6,555; \$4,950; \$4,246; \$3,329; and \$1,742. The loans have been forgiven due to misleading and predatory practices by the university. Applicant no longer owes the debts.

1.i through 1.k. of the SOR were delinquent private student loans that had been placed in collections in the approximate amounts of \$3,505; \$3,375; and \$1,093. The loans have been forgiven due to misleading and predatory practices by the university. Applicant no longer owes the debts.

1.l A delinquent debt owed to the Marine Corps on an account placed in collection in the approximate amount of \$1,628. Applicant states that the debt was garnished from his payroll account beginning May 13, 2020. (Applicant's Exhibit D, and Tr. pp. 36 - 37.) Applicant has paid the debt.

Applicant currently earns approximately \$78,000 annually. In 2020, with over time his total gross income was about \$130,000. In 2021, he earned about \$90,000. In addition to his bills, he pays \$900 a month in child support.

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 admitted to the single allegation set forth under this guideline. From December 2011 to June 2018, Applicant was employed with a defense contractor as an Electronics Technician and held a security clearance. On two separate occasions, Applicant brought unauthorized visitors into the workplace knowing it to be against company and DoD policy. A report dated August 22, 2019, from a DoD investigator concerning the circumstances surrounding Applicant's previous employment and termination disclosed that Applicant had a practical joke played on him by a female co-worker. The female co-worker had a t-shirt printed with a photo of the Applicant on the front of it with a derogatory comment, and wore it to work. In response, outside of work hours as a joke, Applicant texted the female words to the effect, "Wait until you see some of the seductive photos I took of you in your cubicle and share them". Applicant received an unrecalled negative text from the female employee, and Applicant immediately apologized. Applicant's intentions were to joke around and he had no intentions of doing harm or offending anyone. Applicant was terminated for a violation of the anti-harassment offensive work behavior policy, as well as violation of physical security policy. He was not recommended for a security clearance or rehire. Applicant

testified that he believes he disclosed this information to his current employer, but he is not sure. (Tr. pp. 50 - 51.)

An incident report from his current employer shows that Applicant failed to self-report a writ of garnishment that was issued against him on May 13, 2020. (Government Exhibit 3.)

A letter from Applicant's Facility Security Officer dated September 28, 2021, indicates that he is aware of Applicant's oversights in judgment regarding his financial activities and the reporting of his past misconduct. Despite this he believes the Applicant now has an improved code of ethics and understands the need and responsibility for the timely disclosure of security significant life events. (Applicant's Exhibit G.)

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 has demonstrated that his financial indebtedness has been resolved and is unlikely to recur. Accordingly, 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 conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply

with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information; and

(2) any disruptive, violent, or other inappropriate behavior.

Applicant violated security policy and procedure on two separate occasions when he brought unauthorized visitors into the workplace; he engaged in inappropriate offensive behavior directed toward a female coworker, resulting in his termination from previous employment; and he failed to self-report to his current employer's security office that a writ of garnishment was issued against him for delinquent indebtedness. The evidence is sufficient to raise the above disqualifying conditions.

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;

(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.

In June 2018, Applicant was terminated from his previous employment for a violation of the anti-harassment and offensive work behavior policy, and violation of

physician security policy. Since then, Applicant has still shown some disregard for security procedures. Applicant failed to inform his security office of his writ of garnishment issued against him for delinquent financial indebtedness. (See Government Exhibit 3, incident report dated February 1, 2021.) To be eligible for access to classified information, Applicant's overall character and conduct must consistently show a pattern of honesty, integrity, good judgment and reliability. To be terminated from employment with a defense contractor and not recommended for a security clearance is very serious. Applicant needs more time to show that he can use good judgment and be trusted under any circumstances. More work in this area is needed. None of the mitigating conditions are applicable. Accordingly, 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. At this time, Applicant 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. 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 Personal Conduct security concerns. The Financial Considerations guideline is found for the Applicant.

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:	FOR APPLICANT
Subparagraph 1.a through 1.l	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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge