



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



In the matter of:)
)
) ISCR Case No. 21-00840
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

January 12, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 23, 2020, Applicant submitted a security clearance application (e-QIP). (Item 3.) On August 2, 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. 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 September 9, 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 September 21, 2021. A complete copy of the File of Relevant Material (FORM), containing six Items was received by Applicant on October 1, 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 December 2, 2021. Items 1 through 6 will hereinafter be referred to as Government Exhibits 1 through 6.

Findings of Fact

Applicant is 36 years old and married with three children. He has a high school diploma. He is employed by a defense contractor as a shipbuilder. 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 seven delinquent accounts totaling in excess of \$27,000. Applicant admits all of the all debts listed in the SOR, except 1.c. Credit reports of the Applicant dated October 1, 2020, and June 29, 2021, confirm the indebtedness. (Government Exhibits 5 and 6.)

Applicant began working for his current employer in January 2020. He has had consistent employment, except for one brief period of unemployment from June 2011 until September/October 2012. (Government Exhibit 3.) Applicant has been married since February 2015. None of Applicant's children reside with him. (Government Exhibit 4.)

In his answer to the SOR, Applicant failed to provide any explanation for his excessive delinquent indebtedness. He also failed to provide any information showing any attempts on his part to contact the creditors and repay or resolve his delinquent debts. Applicant failed to disclose any of these delinquent debts on his 2020 security clearance application. During his subject interview in December 2020, he discussed a delinquent car loan and three medical accounts.

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

1.a. A delinquent debt is owed to a state department of social service for child support arrearage in the amount of \$14,970. Applicant had an active warrant that was issued in January 2020 for unpaid child support. The warrant was recalled by the court in December 2020. Applicant explained to the Government investigator that he had never been delinquent on child support, but that he stopped paying and had not paid since February 2019. Applicant claims that the notice to appear in court and other documents were sent to his former residence and he subsequently missed his court date. At the time of his DoD background interview, Applicant did not intend of turning himself in on

the warrant because he did not have \$1,400 needed to be released from jail. Documentation provided by Applicant from the state division of child support enforcement dated June 25, 2021, shows that regarding Case #0003720431, Applicant has a current total balance owed of \$18,859.42, with \$16,256.02 owed to the parent custodian for support and \$2,603 owed to the state. Applicant's monthly child support payment is \$490 which began in August 2016. (Government Exhibit 4.) Other documentation provided by Applicant from the state division of child support enforcement dated June 25, 2021, shows that regarding Case #0003583637, Applicant has a current total balance of \$14,970.81, owed to the parent custodian and \$196 owed to the state. His monthly payment is \$339.23 which began in March 2013. There is no evidence in the record that shows that he has started making payments toward the debt yet. (Government Exhibit 4.)

1.b. A delinquent debt is owed to a creditor that was placed for collections in the approximate amount of \$8,042. The debt remains owing. (Government Exhibits 5 and 6.)

1.c. A delinquent debt is owed to a creditor that was charged off in the approximate amount of \$2,500. The debt remains owing. (Government Exhibits 5 and 6.)

1.d. A delinquent medical account was placed for collection in the approximate amount of \$938. The debt remains owing. (Government Exhibits 5 and 6.)

1.e. A delinquent medical account was placed for collection in the approximate amount of \$368. The debt remains owing. (Government Exhibits 5 and 6.)

1.f. A delinquent debt is owed to a creditor that was placed for collection in the approximate amount of \$333. The debt remains owing. (Government Exhibits 5 and 6.)

1.g. A delinquent debt medical account was placed for collection in the approximate amount of \$65. The debt remains owing. (Government Exhibits 5 and 6.)

Applicant has failed to provide any evidence in mitigation. He has not made a good faith effort to address his delinquent debts nor has he taken any meaningful step to resolve the delinquencies. He has failed to show that he has made even one payment toward resolving his debts. Furthermore, he has failed to provide evidence showing that his current financial situation is under control and that there is no risk of recurrence of the financial problems at issue.

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant is indebted to a number of creditors for delinquent accounts totaling in excess of \$24,000 that have been placed for collection or are in arrears. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is delinquently indebted to each of the creditors set forth in the SOR. He has failed to provide any evidence in mitigation. This shows poor judgment and unreliability. 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 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.g:	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