



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-01347
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Department Counsel
For Applicant: Michael Weiser, Attorney At Law

December 7, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On June 23, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 August 12, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 21, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 24, 2021, and the hearing was convened as scheduled on October 14, 2021. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered twenty exhibits,

referred to as Applicant's Exhibits A through T, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 22, 2021.

Findings of Fact

Applicant is 36 years old. He is divorced with three children. He is employed by a defense contractor as a Supplier Quality Engineer. 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 large delinquent indebtedness includes two vehicle repossessions, an eviction judgment, back rent, costs and fees for breach of a lease agreement, medical accounts, and other debts. In his answer, Applicant admits with clarification, allegations 1.a., 1.b., 1.c., and 1.d. He denies with clarification allegations 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., and 1.n. Credit reports of the Applicant dated June 18, 2020, and September 14, 2021, confirm this indebtedness. (Government Exhibits 3 and 4.)

Applicant is a recovering alcoholic. He was told by his father as early as age 17, and many times growing up, that the disease runs in their family and that he should be careful.

Applicant began working in the defense industry in 2007, when he was 20 years old. He started as a machinist helper/toolmaker apprentice. With no formal education, over the years, Applicant has worked himself up to a senior level quality engineering position. In 2013, while employed for another defense contractor, Applicant applied for a TS/SCI clearance through OPM. An SOR was issued to the Applicant, but it never went to hearing because Applicant left the company before the matter was adjudicated, and his sponsorship stopped. (Tr. p. 59.)

In August 2018, Applicant was terminated by his previous employer for excessive tardiness and absences as a result of his alcohol abuse which also affected his physical health. (Government Exhibit 1, page 35, and Tr. p. 59-62.) When Applicant lost his job, he was unable to pay his bills, and they became delinquent. Applicant also lost his wife, and went through a difficult divorce. Applicant testified that even prior to losing his job, his financial situation was "very tight" and "stressed." He explained that his financial situation has been difficult for a long time. Applicant acknowledges that he was living beyond his financial means for a long time. His family helped him and his ex-wife get into an expensive house that they could not afford. His two vehicles were repossessed, and other bills became delinquent. Applicant's physical health also suffered. The snowball effect of these things caused a number of his debts to become delinquent. Applicant could not afford to pay for the cost of alcohol and drug treatment rehabilitation. So, his father paid for the cost. (Tr. p. 69.)

Before he was terminated, Applicant usually worked between 60 and 80 hours a week on the job. His wife did not work outside the home. To cope with a difficult marriage, Applicant stated that he “self-medicated” by drinking excessively.

In 2017, after ignoring intestinal and abdominal pain for several weeks, Applicant was diagnosed with pancreatitis, and checked himself into a drug and alcohol rehabilitation program. This was Applicant’s third time entering into and completing an inpatient treatment program for drug and alcohol recovery. Applicant completed a 28 day in-patient treatment program followed by an aftercare program which involved continued abstinence and structured meetings with psychologists, therapists, and a community-based 12-step program. Applicant stated that he has been completely abstinent from alcohol since January 23, 2019. (Tr. p. 41.)

In March 2019, Applicant began working for his current employer. He completed a security clearance application dated June 4, 2020. After the SOR was issued in this matter, Applicant started to address his financial issues by paying off some of his debts, trying to settle others, and having others removed from his credit report. Applicant hired a credit repair company and paid them \$1,200 to assist in resolving his debts. (Tr. p. 42.)

The following delinquent debts listed in the SOR were delinquent:

1.a. A delinquent debt was charged off in the approximate amount of \$19,982. After losing his job, Applicant’s car was repossessed and sold at auction. The deficiency balance was owed. A recent settlement offer was reached in the amount of \$915. Initially, Applicant agree to make three separate payments of \$304.90, but then elected to pay off the entire debt in full, which he has recently done. The debt has been resolved. (Applicant’s Exhibits A and Q.)

1.b. A delinquent debt was charged off in the approximate amount of \$10,203. A second car was repossessed and sold at auction. The deficiency balance was owed. A recent settlement offer was reached in the amount of \$4,100. Applicant is required to make monthly payments of \$227.78 until February 23, 2023. Applicant has made three payments under the agreement. He still owes about \$3,419. Applicant plans to resolve the debt within the next 18 months. (Applicant’s Exhibit B and Tr. pp. 44 and 50.)

1.c. A delinquent debt was placed for collection in approximate amount of \$3,563. Applicant was evicted for failing to pay his rent and breaking his lease. He owes back rent and associated fees. Applicant admitted that he left the apartment, and went into alcohol rehabilitation. After completing rehabilitation, he went back to work, and was advised that the creditor had obtained a judgment against him and a writ of garnishment was issued. The debt remains owing. Applicant plans to resolve the debt within the next 18 months. (Applicant’s Exhibits C and D and Tr. pp. 49 and 50.)

1.d. A delinquent debt was placed for collection in the approximate amount of \$2,455. This debt is related to the circumstances set forth in allegation 1.c. Applicant is liable for back rent and fees for a second apartment. The debt remains owing. (Tr. p. 49.)

1.e. A delinquent debt was placed for collection in the approximate amount of \$2,319. Applicant has no recollection of this debt. The credit repair company challenged the validity of the debt and it was removed from Applicant's credit report. (Applicant's Exhibits F and G and Tr. p. 52.)

1.f. A delinquent debt was placed for collection in the approximate amount of \$1,778. Applicant has no recollection of this debt. The credit repair company challenged the validity of the debt and it was removed from Applicant's credit report. (Applicant's Exhibits F and G and Tr. p. 52.)

1.g. A delinquent debt was placed for collection in the approximate amount of \$702. Applicant has no recollection of this debt. The credit repair company challenged the validity of the debt and it was removed from Applicant's credit report. (Applicant's Exhibits F and G and Tr. p. 52.)

1.h. A delinquent debt was placed for collection in the approximate amount of \$565. Applicant has no recollection of this debt. The credit repair company challenged the validity of the debt and it was removed from Applicant's credit report. (Applicant's Exhibits F and G and Tr. p. 53.)

1.i. A delinquent debt was placed for collection in the approximate amount of \$372. Applicant has no recollection of this debt. The credit repair company challenged the validity of the debt and it was removed from Applicant's credit report. (Applicant's Exhibits F and G and Tr. p. 53.)

1.j. A delinquent debt was placed for collection in the approximate amount of \$250. This is a medical account that Applicant recently paid in full. (Applicant's Exhibit H and Tr. p. 53.)

1.k. A delinquent debt was placed for collection in the approximate amount of \$248. Applicant has no recollection of this debt. The credit repair company challenged the validity of the debt, and it was moved from Applicant's credit report. (Applicant's Exhibits F and G and Tr. p. 54.)

1.l. A delinquent debt was placed for collection in the approximate amount of \$167. Applicant has no recollection of this debt. The credit repair company challenged the validity of the debt, and it was removed from Applicant's credit report. (Applicant's Exhibits F and G and Tr. p. 55.)

1.m. A delinquent debt was placed for collection in the approximate amount of \$148. This was a remaining balance owed on a credit card. Applicant paid the debt in full. (Applicant's Exhibit I and Tr. p. 55.)

1.n. A delinquent debt was placed for collection the approximate amount of \$121. This was a medical account. Applicant recently paid the debt in full. (Applicant's Exhibit H and Tr. p. 55.)

Applicant failed to file his Federal and state income tax returns in a timely fashion for tax year 2017. He states that because he had lost his job and went through a divorce, he put his income tax filing on the back burner. (Tr. p. 56.) He states that he filed these income tax returns in June 2020, but the IRS did not acknowledge the filing until July 2021. Applicant recently learned that he owes the Federal government \$925 in late tax filing penalties and interest. A payment on this debt is due December 21, 2021. (Tr. p. 57.)

Applicant's history includes three separate stints at three reputable inpatient treatment centers in the country. From June 2004 to September 2004, Applicant completed his first inpatient treatment program for alcohol and drug recovery. This was a 90-day treatment program. (Tr. p. 66.) Applicant abstained from drinking alcohol for a period, before he returned to abusing alcohol.

In January 2009, Applicant attended a second 90-day treatment program for alcohol and drug recovery. This was also an inpatient treatment program. After completing this program, Applicant was able to abstain from consuming alcohol for a period before he returned to consuming alcohol. Applicant testified that he has sporadically attended Alcoholics Anonymous over the years, until the last two and a half years when he has taken it very seriously. His third inpatient treatment program, his most recent one, was discussed earlier in this decision.

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. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has a history of financial delinquencies related in part to his alcohol problem. His large indebtedness and irresponsible conduct shows a history and pattern of poor judgment and an inability to meet his financial obligations. 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.

Since issuance of the SOR, Applicant has been working to resolve his delinquent debts. He is commended for making some progress. However, Applicant still owes a significant amount of money in delinquent debt, in excess of \$10,000. Furthermore, the likelihood that he will become excessively delinquently indebted again is highly probable. Applicant is a recovering alcohol who has not shown that he can beat his disease. He was terminated from previous employment related to his drinking. His divorce was related to his drinking. He has undergone three separate inpatient treatment programs because of his drinking. He still has delinquent debts because of his drinking.

Each time following inpatient alcohol treatment, Applicant had been sober for a period, and then returns to drinking. His excessive drinking pattern has had a detrimental impact on his finances. Until recently, Applicant has not been in control of

his finances. Applicant's finances and his alcohol consumption seem to go hand and hand. When Applicant is drinking, his finances are in disarray. When he goes into treatment, he stops drinking, and cleans up his credit. Applicant has been abstinent since January 2019, over two years, and his finances have improved and are somewhat under control. However, a sustained history of financial responsibility is needed in order to meet the eligibility requirements for access to classified information. Applicant needs more time to prove that he can be financially responsible. Accordingly, the financial consideration 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 has been working on resolving his indebtedness. He currently owes in excess of \$10,000 in delinquent debt, including what he owes to the IRS. Applicant has more work to do to show the Government that he can be consistently responsible with his financial affairs, in order to meet the eligibility requirements for access to classified information.

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 concern.

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:	AGAINST APPLICANT
Subparagraphs 1.a., and 1.b.	For Applicant
Subparagraphs 1.c., and 1.d.	Against Applicant
Subparagraphs 1.e, through 1.n.	For 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