



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02809
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

June 14, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On October 16, 2017, Applicant submitted a security clearance application (e-QIP). On August 5, 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 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on October 26, 2021, and requested a hearing before an administrative judge. The case was assigned to me on January 20, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on April 19, 2022, and the hearing was convened as scheduled on May 13, 2022. The Government

offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered three exhibits, referred to as Applicant's Exhibits A through C, which was admitted without objection. Applicant testified on his own behalf. The record remained open following the hearing, until close of business on May 30, 2022, to allow the Applicant to submit additional supporting documentation. Applicant submitted no additional documentation. DOHA received the transcript of the hearing (Tr.) on May 24, 2022.

Findings of Fact

Applicant is 46 years old. He is married, with four children, consisting of three biological children and one step-child. He has a high school diploma. He holds the position of IT Warehouse Lead. 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 five delinquent debts totaling almost \$20,000. Applicant admitted each of the allegations set forth under this guideline. Credit reports of the Applicant dated October 20, 2017; May 2, 2019; and December 21, 2021, confirm that at one time he was indebted to each of the creditors listed in the SOR. (Government Exhibits 3, 4, and 5.)

Applicant has no military service. His father served in the Air Force and consequently, Applicant was born on an Air Force base. Applicant has been working at the same location since October 2012, even though the contracts and the name of the company has changed over the years.

Applicant married in 2009. Applicant's financial difficulties started in 2013 due to periods of excessive spending. He testified that he has always paid his child support since being required to do so, however there came a time when he could not afford to pay the amount required. Applicant pays child support totaling approximately \$800 a month for two of his biological children who live with their mothers. (Applicant's Exhibit A.) Applicant fell in child support arrears in the amount of \$18,000 on one account, and \$11,000 on another account. To resolve the debt arrearage, he borrowed approximately \$30,000 from his 401k, and brought the debt current. (Government Exhibit 4.)

Although Applicant has maintained steady employment over the years, there were times when he did not earn enough money to support he and his wife's spending habits. They have lived beyond their means and without a budget. In 2015, Applicant

purchased a motorcycle that she should not have purchased. He wanted to ride with his father before he and his father grew too old for the sport. (Tr. p. 37.) After a year with the motorcycle, and realizing that he could not afford the motorcycle, Applicant returned the motorcycle to the creditor.

That same year, Applicant was diagnosed with kidney disease and was required to go on dialysis that continues to this day. (Tr. p. 38.) Applicant states that between he and his wife, after taxes, they now bring home about \$6,000 a month. They now follow a budget, and after paying their regular monthly expenses, they have about \$1,400 left in discretionary funds at the end of the month. (Tr. pp. 46-49.)

The following delinquent debts are of security concern:

1.a. Applicant is indebted to a creditor in the amount of \$18,779 (the balance owed) for an account that was charged off for the purchase of a motorcycle in 2015 that he was financing. Applicant returned the motorcycle after a year. (Tr. p. 36.) Applicant has not yet contacted the creditor about this debt, but states that he plans to do so. The debt remains owing.

1.b. Applicant is indebted to a creditor in the amount of \$589 for an account that was placed for collection. This was an old credit card. Applicant claims that he remembered paying it off over the telephone. (Tr. pp. 40-41.) He provided no documentation to support his testimony. The debt remains owing.

1.c. Applicant was indebted to a creditor in the amount of \$90 for an account that was placed for collection. This was a pest control service account that was outstanding. Applicant has paid the debt in full. (Applicant's Exhibit B, and Tr. pp. 26 and 42-43.)

1.d. Applicant was indebted to a creditor in the amount of \$52 for an account that was placed for collection. This was a bottled water account. Applicant has paid the debt in full. (Applicant's Exhibit C and Tr. p. 27 and Tr. pp. 43-44.)

1.e. Applicant is indebted to a creditor in the amount of \$454 for an account that was placed for collection. This was a debt to a jewelry store. Applicant does not know the status of the debt. (Tr. pp. 45-46.) The debt remains owing.

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 has a history of financial hardship. His actions or inactions both demonstrate a history of not addressing his debt and/or an inability to do so. 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
- (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 incurred delinquent debt that he still has not paid. Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. Applicant appears to want to resolve his debt but has work to do to achieve this. At this time, Applicant needs more time to show the Government that he will properly resolve his financial delinquencies with regular systematic payments and consistency. None of the mitigating conditions are applicable.

There is insufficient evidence in the record to show that Applicant has made a good faith effort to resolve his debts. Overall, Applicant shows little progress towards resolving his debts. He paid two small debts, and has no knowledge of another debt. He still owes a significant amount of money to one of his creditors and has made no effort to resolve the debt. There is insufficient evidence in the record to show that the Applicant has carried his burden of proof to establish mitigation of the government security concerns under Guideline F.

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. In the event that Applicant follows through with his commitment to show financial responsibility, sometime in the future he may be found to be sufficiently reliable to properly protect and access 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a., 1.b., and 1.e.	Against Applicant
Subparagraph 1.c., and 1.d.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge