



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



In the matter of:)
)
) ISCR Case No. 21-02149
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

August 2, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 24, 2020, Applicant submitted a security clearance application (e-QIP). On September 22, 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 *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 November 30, 2021, and requested a hearing before an administrative judge. The case was assigned to me on February 28, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on April 25, 2022, and the hearing was convened as scheduled on June 21, 2022. The Government

offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered two exhibits, referred to as Applicant's Exhibits A and B, which was admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 30, 2022.

Findings of Fact

Applicant is 32 years old. He is unmarried and has no children. He has a Bachelor's Degree in Business Management. He holds the position of Warehouse Specialist. 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 seven allegations consisting of delinquent debts totaling in excess of \$50,000, which includes collections, charge-offs and a repossession. Applicant admits each of the allegations with explanations. Credit reports of the Applicant dated October 2, 2020; September 13, 2021; and June 14, 2022, confirm that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 3, 4, and 5.)

Applicant served in the U.S. Army from 2011 to 2015. During his military career, Applicant was deployed in Operation Enduring Freedom in 2012. He received several awards and decorations for his military service, including the Army Achievement Medal and two Army Commendation Medals. While in the military, Applicant held a security clearance without incident.

Applicant comes from a large tight-knit Samoan Family where tradition requires him to provide financial support to his immediate and extended family members who are in need. Applicant has become excessively indebted because he has felt obligated and is expected to help his family members. Applicant explained that until recently he lived with his aunt and uncle and provided for their financial support. In 2020, Applicant moved away from their home, and had saved up enough money to pay the \$7,000, required to cover the deposit and first month's rent for his parents. Applicant is currently living with his parents and siblings in this house. Applicant is helping to provide his immediate family with financial support. Applicant's father recently retired from the Army, after serving 30-plus years in the reserves, and 11 years on active duty. Applicant's rent increased by \$1,000 monthly, and he not been able to afford to pay his delinquent debts. The total monthly rent is now \$3,500 monthly. Applicant's father is paying half of the rent, and Applicant pays the other half. Applicant has six younger siblings, two brothers and four sisters.

The following delinquent debts are of security concern:

1.a. Applicant is indebted to a creditor in the amount of \$333 for an account that was placed for collection. This was Applicant's insurance policy payment. He has not tried to contact the creditor. His intent is to pay the debt when he can afford to do so. The debt remains owing. (Tr. pp. 28-29.)

1.b. Applicant is indebted to a creditor in the amount of \$18,534 for an account that was charged off. This was an automobile loan for a truck that Applicant purchased for the family, while Applicant was on active duty in the Army. He intends to pay the debt when he can afford to do so. The debt remains owing. (Tr. p. 32.)

1.c. Applicant is indebted to a creditor in the amount of \$10,204 for an account that was charged off. This was a loan Applicant took out to pay for his grandmother's funeral in Samoa. He is currently trying to set up payment arrangements. This debt remains owing. (Tr. p. 34.)

1.d. Applicant is indebted to a creditor in the amount of \$2,274 for an account that was charged off. This is Applicant's cable bill. Applicant explained that one of his family members ordered movies without him knowing it, and charged up his account. (Tr. p. 35.) Applicant stated that he has made two payments of \$300 toward this debt. He has provided documentation that supports these payments. He does not know how much he still owes, but he intends to continue his payments until the debt is paid in full. (Applicant's Exhibit B.)

1.e. Applicant is indebted to a creditor in the amount of \$541 for an account that was placed for collection. This was a credit card that Applicant opened. Applicant states that he has paid off the debt, and has provided documentation to show that the account has been settled in full and resolved. (Applicant's Exhibit A, and Tr. p. 36.)

1.f. Applicant is indebted to a creditor in the amount of \$700 for an account that was charged off. This was a credit card that Applicant opened. Applicant states that he paid off the debt, but he cannot find the receipt to verify his payment. The debt remains owing.

1.g. Applicant is indebted to a creditor in the amount of \$555 for an account that was charged off. This was a credit card that Applicant opened. Applicant states that he paid off the debt, but he cannot find the receipt to verify his payment. The debt remains owing.

Applicant testified that he earns about \$2,600 a month. He also receives VA disability which is about \$1,700 monthly, totaling approximately \$4,500 monthly that he has to live on. Applicant stated that he plans to start paying his delinquent debts next month. In addition to half of the rent, Applicant's regular monthly expenses include \$300 in utilities, \$800 for his car payment, and \$100 for his cell phone. At the end of the month, after he has paid all of his monthly expenses, he has between \$500 and \$700 left in discretionary funds.

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 chosen to provide his family with financial assistance and has been unable to pay his own debts. He has a history of financial hardship. His actions or inactions both demonstrated a history of not addressing his debt and 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 could not afford to pay because his priorities have been directed at helping his family, including his immediate and extended family members. He has recently directed his focus at resolving his delinquent debts. However, he is just starting the process. Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. Applicant needs more time to show the Government that he will continue to 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's delinquent debts have been resolved. Overall, Applicant shows little progress towards resolving his debts. He still owes a significant amount of money to his creditors that he obviously cannot afford to pay or has simply ignored. 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. through 1.c.	Against Applicant
Subparagraph 1.d. and 1.e.	For Applicant
Subparagraphs 1.f and 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge