



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



In the matter of:)	
)	
)	ISCR Case No. 21-02625
)	
)	
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 May 3, 2021, Applicant submitted a security clearance application (e-QIP). On December 13, 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 January 7, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on April 7, 2022, and the hearing was convened as scheduled on June 8, 2022. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted

without objection. Applicant offered eleven exhibits, referred to as Applicant's Exhibits A through K, which were admitted without objection. Applicant testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on June 21, 2022.

Findings of Fact

Applicant is 55 years old. He is married, and has eight children between he and his wife. He has a high school diploma, and 35 years working in the aerospace industry. He holds the position of Senior Principal Supply Chain Planning 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 alleged that Applicant is indebted to nine separate creditors for delinquent accounts totaling in excess of \$113,000, which include collections, charge offs, and vehicle repossessions. In his answer, Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated June 25, 2021; March 16, 2022; and June 1, 2022, confirm this indebtedness. (Government Exhibits 3, 4 and 5.)

Applicant testified that until COVID 19 and its aftermath, he paid his bills on time and had no financial problems. His financial problems began in January or February 2020. His employer downsized due to COVID 19. He lost his job and had to go on unemployment. His salary to support his family went from \$90,000 annually to unemployment benefits. Two weeks after he lost his job, his wife was laid off from her job. This had a huge impact on his family. For about six or seven months, Applicant and his wife supported their family on unemployment benefits. This included making their mortgage payment, and paying the necessities to survive. Many bills became delinquent.

Applicant explained that he grew up in a family that bought and sold cars as a hobby, and used it as a way of making extra money to support the family. Applicant chose exotic cars or cars he knew were underpriced, but highly desirable. He would fix them up, added a special attraction to make them original, (for example, enhancing the stereo system, changing the wheels), and then flipped them. (Tr. p. 25.) Sometimes he made as much as a \$10,000 profit on one sale. On average, he earned about \$30,000 a year selling cars this way. (Tr. p. 30.) Applicant learned the craft from his grandfather, and father who used to do the same thing. When Applicant lost his job, he could not make the payments on several of the cars he had purchased and they were repossessed.

Applicant knew that once he went back to work, he could pull equity out of his house, which he knew to be about \$400,000, and he could easily pay off his delinquent debt with it. This is exactly what he did.

Applicant began working for his current employer in April 2021. He earns about \$120,000 annually. (Tr. p. 73.) To resolve his indebtedness, in November 2021, he applied for and obtained a home equity loan in the amount of \$65,000, that he used to pay his delinquent debts. In January 2022, he refinanced his house and pulled \$88,000, that he used to pay off his remaining delinquent debts. (Tr. pp. 80-81.) On January 17, 2022, Applicant paid off all of the debts set forth in the SOR.

The following delinquent debts were of security concern:

1.a. Applicant was indebted to a creditor for an account that was charged off in the approximate amount of \$26,875. This was his wife's Lincoln Continental. Applicant purchased it between 2018 and 2019. He spent \$80,000 on the car, with monthly payment of \$1,200. When he became unemployed, he could no longer afford to make the car payments. The car was voluntarily repossessed. The account was settled for 60% of what was owed. Applicant paid \$16,125 to resolve the debt. (Applicant's Exhibit A, Tr. p. 26-27, and 36, and 53.)

1.b. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$3,811. This was a credit card that Applicant co-signed for his daughter. Applicant provided a copy of a Satisfaction of Judgement and related documents showing that the debt has been paid. Applicant has resolved the debt. (Applicant's Exhibits C and F, and Tr. p. 39.)

1.c. Applicant was indebted to a creditor for account that was placed for collection in the approximate amount of \$3,321. This was a credit card. Documentation to substantiate payment of the debt is set forth in Applicant's Exhibit B. Applicant has resolved the debt. (Tr. p. 40.)

1.d. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,884. This was a cellular phone bill from T-Mobile. Documentation to substantiate payment of this debt is set forth in Applicant's Exhibit D. Applicant has resolved the debt. (Tr. p. 40-41.)

1.e. Applicant was indebted to a creditor for a account that was charged off in the approximate amount of \$1,302. This was a Kia that was "a lemon" and was returned to the dealer. The deficiency when they sold it was owed by the Applicant. Documentation to substantiate payment of this debt is set forth in Applicant's Exhibit E. Applicant has resolved the debt. (Tr. pp. 46-47.)

1.f. Applicant was indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$820. This was a co-pay for an emergency room visit. Applicant has paid the debt in full. (Tr. p. 59.)

1.g. Applicant was indebted to a creditor for an account that was charged off in the approximate amount of \$21,315. This is for the purchase of Applicant's F-150 truck. Applicant was sued by Ford Motor Company for breach of contract when he could no longer afford to make payments on the account. The account was settled for \$21,000. Documentation to substantiate payment of this debt is set forth in Applicant's Exhibit G. Applicant has resolved this debt.

1.h. Applicant was indebted to a creditor for an account that was placed for collection in the amount of \$19,177. This is for the purchase of a Hyundai Santa Fe SUV, a vehicle that Applicant purchased for his son who has a special needs child. The account was settled for \$15,340. Documentation to substantiate payment of this debt is set forth in Applicant's Exhibit H.

1.i. Applicant was indebted to a creditor for an account that was past due in the amount of \$4,725, with a total balance of \$34,692. This is for the purchase of a Kia Hyundai. The account was settled for \$24,600. Documentation to substantiate payment of this debt is set forth in Applicant's Exhibit I.

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.

Due to COVID 19 and its devastating impact on society, Applicant and his wife lost their jobs and were on unemployment for six or seven months which caused serious

financial hardships for their household. Many of Applicant's debts became delinquent as he was unable to pay his bills. 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 gone back to work. He has obtained a line of credit on his house, refinanced his house, recently sold it, and then purchased another home in order to get his finances back in top order. He understands the importance of being responsible and trustworthy in every aspect of his life, including his finances. He has paid off all of his delinquent debts. He is current with all of his regular monthly expenses. He is living within his means and he intends to continue to do so. He understands that his hobby of selling and buying cars may be too risky to continue in an unstable environment like COVID, and it may be a thing of the past. He understands the great responsibilities attached with holding a security clearance, and the many sacrifices one must make to hold the privilege. Now that he is back to work, Applicant is now following a financial budget and has modified his spending habits to be consistently financially responsible. Applicant has demonstrated responsibility and good judgment, reliability, and trustworthiness. Mitigating conditions 20(a), 20(b), and 20(d) are applicable.

There is sufficient evidence in the record to show that Applicant's delinquent debts have been resolved. Overall, Applicant has shown enormous progress towards resolving his debts. He must continue to be financially responsible going forward. There is sufficient 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. Applicant must continue to show financial responsibility in the future, or he will be in jeopardy of losing his security clearance and 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 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: FOR APPLICANT

Subparagraphs 1.a. through 1.i. For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge