



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



In the matter of:)
)
) ISCR Case No. 21-02327
)
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

August 2, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 24, 2019, Applicant submitted a security clearance application (e-QIP). (Item 2.) On October 28, 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 February 1, 2022. (Item 1.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on March 16, 2022. A complete copy of the File of Relevant Material (FORM), containing six Items was received by Applicant on March 24, 2022. 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 June 21, 2022. Items 1 through 6 will hereinafter be referred to as Government Exhibits 1 through 6.

Findings of Fact

Applicant is 34 years old and twice divorced, with two minor children. He is employed by a defense contractor as a Driver. 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 eleven delinquent accounts totaling in excess of \$37,000. Applicant admits all of the debts listed in the SOR. Credit reports of the Applicant dated March 21, 2020; and August 26, 2026, confirm the indebtedness. (Government Exhibits 5 and 6.)

Applicant served on active duty in the U.S. Army from 2007 through 2015, and was honorably discharged. He began working for his current employer in September 2018. He has had consistent employment, except for one brief period of unemployment from April 2018 to September 2018. (Government Exhibit 2.)

In his answer to the SOR, Applicant attributes his excessive delinquent indebtedness to a divorce, that was finalized in 2015, and the loss of a job. It is noted that Applicant's divorce was seven years ago. Why he waited so long to try to resolve his debts is not known. Applicant stated that he is now taking steps to repay the debts at a pace that allows him the opportunity to resolve the debts a few at a time while remaining capable of paying all of his current financial responsibilities in a timely manner. His plan going forward to pay off several debts at a time and move to other debts as resolution is achieved. He stated that he plans to pay off all of his delinquent debts. He also stated that he attempted to provide documentation to show the debts that are being paid off or have been resolved, but he is having difficulty retrieving those documents. (Government Exhibit 1.)

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

1.a. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$10,265. The debt remains owing.

1.b. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$6,650. The debt remains owing.

1.c. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$5,905. The debt remains owing.

1.d. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$3,650. Applicant stated that he is making payments toward resolving the debt and it is being reduced. He is unable to provide a copy of the payment agreement. There is no documentation to show that the debt is being paid. The debt remains owing.

1.e. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$3,326. Applicant stated that he is making payments toward resolving the debt. He provided a copy of the payment agreement. There is no documentation to show that the debt is being paid. The debt remains owing.

1.f. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$864. Applicant states that he is making payments toward resolving this debt. There is no documentation to show that the debt is being paid. The debt remains owing.

1.g. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$1,848. There is no documentation to show that the debt is being paid. The debt remains owing.

1.h. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$621. Applicant stated that this debt was paid off on February 11, 2021. There is no documentation to show that the debt has been paid. The debt remains owing.

1.i. A delinquent debt is owed to a creditor for an account that placed for collection in the approximate amount of \$294. Applicant paid this debt off in full on February 4, 2021, and has submitted proof of payoff. The debt has been paid.

1.j. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$100. Applicant stated that this debt has been paid. He states that he is unable to provide supporting documentation. The debt remains owing.

1.k. A delinquent debt is owed to a creditor for a judgement entered against the Applicant in 2018 in the approximate amount of \$5,671. Applicant stated that he has been making payments toward resolving this debt and has reduced it to \$3,600. There is no documentation to show that the debt has been paid. The debt remains owing.

Applicant has failed to provide sufficient 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. Applicant submitted evidence to show that he paid

one debt, allegation 1.i., and that he entered into a payment arrangement to pay the debt set forth in allegation 1.e. He has submitted no documentary evidence to show that he is complying with the payment arrangement. He has not proven that he has established a meaningful track record of repayment and that his financial situation has been stabilized. He has not provided 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 at in excess of at least \$37,000 that have been placed for collection or have been charged off. 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 all but one of the creditors set forth in the SOR. He has failed to provide sufficient 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.

While Applicant claims that he has entered into payment agreements, and has been making payments toward his debts, with the exception of one account, he has submitted no documentary evidence to support these claims. 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.h:	Against Applicant
Subparagraph 1.i.	For Applicant
Subparagraphs 1.j and 1.k.	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