



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



In the matter of:)	
)	
)	ISCR Case No. 21-02102
)	
)	
Applicant for Security Clearance)	

Appearances

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

August 31, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On December 7, 2020, Applicant submitted a security clearance application (e-QIP). On February 18, 2022, 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 a date uncertain, and requested a hearing before an administrative judge. The case was assigned to me on April 25, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on May 11, 2022, and the hearing was convened as scheduled on July 20, 2022. The Government

offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant testified on his own behalf. He offered one exhibit, referred to as Applicant's Exhibits A, which was admitted without objection. The record remained open until close of business on July 27, 2022, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on August 1, 2022.

Findings of Fact

Applicant is 37 years old. He is divorced and has one child. He has a Bachelor's degree in Business Management, with an emphasis on Logistics. He holds the position of Heavy Vehicle 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 identified eighteen allegations consisting of sixteen delinquent debts totaling approximately \$56,000, which includes collections, charge-offs and a repossession. Applicant also failed to file his Federal and state income tax returns for tax years 2017 through 2020. Applicant admits each of the allegations. Credit reports of the Applicant dated February 12, 2021; and April 19, 2022, confirm the indebtedness. (Government Exhibits 3 and 4.)

Applicant began working for his current employer in December 2015. He received his first security clearance in 2017. Applicant and wife were married in 2012, but were together since 2001. They have one 15-year-old daughter. During their marriage, they split the cost of their joint expenses, and were each responsible for paying their own personal bills. Both he and his wife were employed, and their financial situation was manageable. Applicant worked long hours on the road away from home which strained the relationship. Applicant also took a job that required him to relocate his home. Applicant's wife was not happy about the move. Applicant and his wife divorced in 2016. Going from a two income household to one income has been difficult for the Applicant. He has tried to maintain his living situation by charging living expenses on credit cards and obtaining personal loans. He overextended himself to the point where he could no longer keep up with the payments.

Most of the debts listed in the SOR were incurred between 2016 and 2017. Applicant also had moving expenses and relocation costs just to accept his current job. Applicant believes this all contributed to his divorce. Applicant takes full responsibility

for all of the debts listed in the SOR. During his re-investigation subject interview, Applicant stated that given the extent of the debt and the circumstances surrounding it, he planned on filing for bankruptcy. Applicant spoke to an attorney about filing bankruptcy, and he was advised not to do it. (Tr. p. 37.) At the hearing, Applicant stated that he was trying to tackle one debt at a time with the intent of eventually getting them all paid. Following the hearing, Applicant enrolled in a debt consolidation program that is assisting him in resolving his debts. (Applicant's Post-Hearing Exhibit A.)

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

1.a. Applicant failed to timely file his Federal income tax returns for tax years 2017 through 2020. Applicant explained that he did not file them because he did not have the money to pay the taxes. (Tr. p. 28, and Applicant's Exhibit A.) He states that his 2017 and 2018 returns were filed at the end of last year. His 2019 and 2020 returns were filed at the beginning of this year. (Tr. p. 29, and Applicant's Exhibit A.) He states that he filed his 2021 return about a month and a half before the hearing. This allegation is found for the Applicant.

1.b. Applicant is indebted to the Internal Revenue Service for back taxes in the approximate amount of \$21,537. Applicant stated that since he has now filed all of his income tax returns, his refunds are going towards his tax debts, and he has reduced his tax liability to about \$7,000. He has already set up an automatic payment allotment of \$461 monthly to pay his back due taxes, until the debt is paid in full. (Tr. p. 30.) This allegation is found for the Applicant.

1.c. Applicant failed to timely file his state income tax returns for tax years 2017 through 2020. Applicant explained that he did not file them because he did not have the money to pay the taxes. (Tr. p. 28.) He states that his 2017 and 2018 returns were filed at the end of last year. His 2019 and 2020 returns were filed at the beginning of this year. (Tr. p. 29.) He filed his 2021 return about a month and a half before the hearing. Applicant owes no state taxes. This allegation is found for the Applicant.

1.d. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$7,361. This is a personal loan Applicant took out to get an apartment and furnish it. He made three payments and could no longer pay the debt. He plans to pay the debt as soon as he can. (Tr. 35.) Applicant has included this debt in the debt consolidation program and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) The debt is still owing.

1.e. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$5,515. This is a personal loan Applicant used for living expenses. He plans to pay the debt as soon as he can. (Tr. p. 36.) Applicant has included this debt in the debt consolidation program, and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) The debt is still owing.

1.f. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$3,302. Applicant does not recognize the debt, but believes it to be his. He plans to pay it when he can. (Tr. p. 37.) Applicant has included this debt in the debt consolidation program and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) The debt is still owing.

1.g. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$2,610. Applicant does not recognize the debt, but does not dispute it. (Tr. p. 39.)

1.h. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$2,500. This is a personal loan Applicant took out for living expenses. He made a few payments and could no longer afford to continue. (Tr. p. 39.) Applicant has included this debt in the debt consolidation program, and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) The debt is still owing.

1.i. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,400. This is a telephone bill. Applicant stated that he is disputing the debt with the creditor. Applicant explained that he switched carriers and one carrier bought out the other. He believes that he should not owe the debt. (Tr. p. 41.) The debt is in dispute. This allegation is found for the Applicant.

1.j. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$939. This is a credit card that Applicant used for living expenses. Applicant states that he is currently paying this bill. (Tr. p. 42.) Applicant has included this debt in the debt consolidation program, and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) (This debt appears to be the same debt set forth in allegation 1.l below.)

1.k. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$895. This is a credit card that Applicant used for living expenses and other related matters. Applicant's credit report dated February 12, 2021, shows the debt as owing. (Government Exhibit 3.) The debt is still owing.

1.l. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$890. Applicant stated that he negotiated with the creditor to settle the account for \$725. Applicant has made two payments of \$111 toward the settlement amount. (Tr. p. 45.) Applicant has included this debt in the debt consolidation program, and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) The debt is still owing.

1.m. Applicant is indebted to a creditor for an account placed for collection in the approximate amount of \$593. This is a credit card debt. Applicant's credit report dated February 12, 2021, shows the debt as owing. (Government Exhibit 3.) The debt is still owing.

1.n. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$465. This is a credit card. Applicant has included this debt in the debt consolidation program, and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) The debt is still owing.

1.o. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$201. This is the cost of cable equipment that Applicant contends he returned to the cable company and does not owe. The company contends that he did not return the equipment. (Tr. p. 47.) Applicant has included this debt in the debt consolidation program, and will be working toward resolving it. (Applicant's Post-Hearing Exhibit A.) The debt is still owing.

1.p. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$179. Applicant states that he paid the debt in April 2022. (Tr. p. 48.) There is no documentation to show that Applicant paid the debt. This is a credit card debt. Applicant's credit report dated February 12, 2021, shows the debt as owing. (Government Exhibit 3.) The debt is still owing.

1.q. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,442. Applicant does not recognize the debt. (Tr. p. 48.) Applicant's credit report dated February 12, 2021, shows the debt as owing. (Government Exhibit 3.) The debt is still owing.

1.r. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$6,467. This is a personal loan Applicant took out. He made payments toward the debt as long as he could, until he could no longer afford to. Applicant's credit report dated February 12, 2021, shows the debt as owing. (Government Exhibit 3.) The debt is still owing.

Applicant stated that he averages about \$100,000 annually. After paying his rent of \$1,720, his car payment of \$611, child support of \$700, and other monthly expenses, he still has some money left at the end of the month. He does not spend lavishly or wastefully, and is not getting into any further debt. He is currently following the instructions of the debt consolidation company and making monthly payments of \$163 bi-weekly to be applied toward the delinquent debts listed in the contract. (Tr. pp. 51-54.)

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 became excessively indebted about the time he moved from one city to another to take a new job, and then went through a divorce. He has been unable to pay his delinquent debts. 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 states that he has every intent to pay his delinquent debts, but has been unable to afford to do so. He has allegedly paid one small debt, and made two payments toward another debt. Applicant recently hired a debt consolidation company

to assist him in resolving his delinquent debt. He has included about \$21,000 worth of debt in this consolidation program and is just starting the process to resolve them. There is still a significant amount of debt that he has not included in the program. In the scheme of things, it will take him a significant amount of time to resolve his total indebtedness. At one point, Applicant had planned on filing for bankruptcy, but was advised by an attorney not to do so. Although Applicant enrolled in a debt consolidation program he has not made any real progress toward resolving his debts as of yet. This is too little, too late. 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 cannot afford to pay or has simply ignored for many years. 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.	For Applicant
Subparagraphs 1.d. through 1.h.	Against Applicant
Subparagraph 1.i.	For Applicant
Subparagraphs 1.j through 1.r.	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