



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



In the matter of:)	
)	
)	ISCR Case No. 21-02482
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Pro se

August 30, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on April 29, 2021. On December 20, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 28, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 30, 2022. The case was assigned to me on April 6, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on April 29, 2022. The case was heard as scheduled on June 15, 2022.

The Government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 27, 2022. (Tr. at 13-16.)

Findings of Fact

Applicant is 35 years old and was married in 2007 and divorced in 2014. He has no children. He earned a high school diploma in 2005 and enlisted in the U.S. Marine Corps following graduation. He served on active duty for nine years and deployed on three occasions. He was medically separated in August 2014 under Honorable conditions. Applicant always planned on serving a full 20 years in the Marine Corps. His medical separation was a disappointment for him. At that time, he held the rank of Sergeant (E-5). He has worked as an aircraft technician for his current employer since March 2021. He held a security clearance while in the Marine Corps. He is seeking to obtain a security clearance in relation to his employment. (Tr. at 6-7, 18-22.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR identifies seven past-due or charged-off debts owed by Applicant totaling about \$37,000 (SOR 1.a through 1.g). In his Answer, Applicant admitted all of the SOR allegations and commented that he has paid one of the debts. The existence and amounts of all seven debts is supported by credit reports dated May 22, 2021; and November 5, 2021. (GE 3 and 4.)

Applicant first started to experience financial problems about one year after he separated from the Marine Corps. He had less income at that time than when he was in the Corps. By 2016, the problems became more acute. He experienced a driving under the influence criminal charge in October 2016 and had to hire an attorney and pay a fine. He described that his financial situation went into a downward spiral at that point. He worked as a day laborer from 2017 until 2021. He lived with his parents starting in 2017 to reduce his living expenses. He spent a lot of time working with the Veterans Administration on his disability claim. He has a 60% disability rating, but a 0% rating for Post-Traumatic Stress Disorder (PTSD). He is presently being reevaluated for PTSD-related issues. He would like to believe that he does not have PTSD, but he is leaving

that to a professional's opinion. He believes that his ego and "military mindset" kept him from asking for help. His lack of work experience and a college degree hurt his ability to find a suitable, good-paying job. On April 9, 2021, Applicant hired a credit-repair company to help him address the delinquent debts he had accumulated. He submitted his e-QIP about four weeks later. He hired the company to repair his credit so that he could qualify to purchase a house in the future. (Tr. at 22-30, 34, 44; GE 1 at 33.)

The current status of the debts listed in the SOR is as follows:

1.a. **Collection Debt in the Amount of \$1,063.** Applicant determined that this debt was for a retail-store credit card account. He asserted in his Answer that he has settled the debt and had it removed from his credit report. He testified that he personally negotiated a settlement with the collection agency based upon the advice he received from his credit advisor. He claims he paid the settlement of the debt in January 2022. This debt is resolved. (Tr. at 30-33; GE 3 at 3; GE 4 at 1, 2; Answer Exhibit 1 at 1.)

1.b. **Charged-Off Debt in the Amount of \$8,089.** This debt is for a secured loan. Applicant opened this loan in April 2016 to pay and consolidate some debts. The loan was collateralized with a vehicle that Applicant owned without any debt. He stopped paying on the debt in October 2016 because he could not keep up with the payments. Because of the age of this debt, Applicant's credit advisors are telling him to let the debt be removed from his credit report after seven years. This debt is not resolved. (Tr. at 39-41; GE 3 at 2; GE 4 at 4; Answer Exhibit 1 at 1.)

1.c. **Charged-Off Debt in the Amount of \$4,341.** This debt is for an auto loan. Applicant opened this loan in April 2016. He stopped paying on the debt in October 2016 because he no longer had a steady paycheck like he did as a Marine. As with the debt in SOR 1.b, his advisors are telling him to wait for the debt to be removed from his credit report after seven years. This debt is not resolved. (Tr. at 42-44; GE 3 at 3; GE 4 at 4; Answer Exhibit 1 at 1.)

1.d **Collection Debt in the Amount of \$424.** This debt is for a wireless telephone account. He returned the phone to the service provider, but a balance remained on the account. Applicant intends to pay this debt over the coming months this year, possibly as early as July 2022. This debt is not resolved. (Tr. at 44-45, 55; GE 3 at 4; GE 4 at 5.)

1.e **Collection Debt in the Amount of \$4,484.** Applicant opened this credit-card account in May 2017. He defaulted on the payments a few months later. Under Applicant's "game plan" he has developed with his advisors, this debt will be one of the last debts that he will repay. This debt is not resolved. (Tr. at 45-47; GE 3 at 3; GE 4 at 5.)

1.f **Charged-Off Debt in the Amount of \$16,433.** Applicant opened this credit-card account in August 2013. He defaulted on the account in August 2016. Applicant does not recall the original purpose of this debt. His credit advisor is disputing this debt to better understand the debt. Applicant believes this may be a duplicate of other debts owed to

the same creditor. If the debt is valid, he intends to negotiate settlement and pay it sometime in the future. This debt is not resolved. (Tr. at 41-42, 47-48; GE 3 at 2; GE 4 at 6.)

1.g **Auto-Lease Account Past Due in the Amount of \$2,285.** Applicant opened this account in January 2016. He fell behind on three payments in 2017, and the car was involuntarily repossessed. Applicant believes that the balance due on the debt after the sale of the car is about \$11,500. Applicant has not yet received guidance from his advisors, so he has not attempted to pay this debt. He intends to repay the debt when he is able to negotiate a settlement. This debt is not resolved. (Tr. at 48-52: GE 3 at 4; GE 4 at 8.)

Mitigation

Applicant is trying to maintain financial stability and not repeat his past mistakes. He puts about \$100 per paycheck into a savings account. He intends to use the funds in that account to repay his debts. His current balance in that account is about \$600. He also contributes 15% of his paycheck into his employer's 401(k) plan. He recognizes that he will not be able to continue in his current job past a certain age because the job is physically demanding. He wants to be ready for retirement. (Tr. at 52-56.)

Applicant has a plan to repay most of his debts one day. The exceptions are the three older debts owed to one creditor. He intends to let them drop off his credit report due to their age. He plans to try to negotiate settlement and make payments of one debt every five months. (Tr. at 52-56.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant owed approximately \$37,000 for seven past-due debts, as of the date the SOR was issued. These facts render the foregoing disqualifying conditions applicable and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Each of the above mitigating conditions has partial application. Most of Applicant's debts arose in or about 2016 or 2017. Applicant has only recently obtained employment that gives him a modest amount of excess cash after paying his current expenses. It is too soon to say confidently that new debts are unlikely to recur or that his past behavior does not cast doubts on his current reliability, trustworthiness or good judgment. AG ¶ 20(a) is partially established.

Some of Applicant's financial problems arose for reasons beyond his control. When he was separated from the Marine Corps, he did not have a plan on his future employment. His finances suffered for several years. It was only recently that he obtained employment that paid him sufficiently well to be able to live on his own and pay his living expenses. He acted responsibly by hiring a consultant that he could afford, but the consultant provides minimal services, mostly in the nature

of advice of how he should plan his next steps and how he can negotiate settlements. He has been successful in paying one debt since April 2021 when he hired the consultant. Applicant hopes to pay a second smaller debt in the coming months. There is no indication in the record, however, that his creditors with the larger debts will agree to small settlements that Applicant can afford. It is too early in Applicant's debt repayment efforts to find that he will be successful with his negotiations and payments within a reasonable period of time. Applicant has not presented sufficient evidence of debt resolutions to show there are clear indications that his financial problems are being resolved or are under control. AG ¶¶ 20(b) and (c) are only partially established.

For the same reason ¶ 20(d) is only partially established. He has initiated a good-faith effort to repay some of his over-due creditors and has paid one of them. However, his evidence in mitigation does not support a conclusion that he is adhering to his plan when so little has been accomplished since he started his job over a year ago. Moreover, Applicant's plan does not include paying the three largest creditors with the oldest debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Further comments are warranted. Applicant's medical separation from the Marine Corps set in motion some difficult times for him. His divorce the same year made his life even more difficult. It was not until seven years later that he found suitable employment and was presented with the opportunity to get his life back on track. Since 2021, he has begun the process of seeking to minimize the potential for pressure, coercion, or duress, as well as the likelihood of the

recurrence of financial problems. He has not, however, provided sufficient evidence that his financial problems are under control. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance at this time.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge