



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



In the matter of:)	
)	
)	ISCR Case No. 21-00907
)	
)	
Applicant for Security Clearance)	

Appearances

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

August 31, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On October 13, 2020, Applicant submitted a security clearance application (e-QIP). On December 7, 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 (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 February 9, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on that same day, and the hearing was convened as scheduled on July 19, 2022. The Government

offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. Applicant offered nineteen exhibits, referred to as Applicant's Exhibits A through M, which were admitted without objection. Applicant testified on his own behalf. Following the hearing, in an effort to clarify the documents he submitted at the hearing, Applicant submitted a packet of documents, referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the final transcript of the hearing (Tr.) on July 29, 2022.

Findings of Fact

Applicant is 48 years old. He is divorced with four adult children. He has a high school diploma and about a year and a half of college. He holds the position of Account Manager. 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 six creditors for delinquent accounts that were either charged off or placed for collection totaling approximately \$50,000. In his answer, Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated November 17, 2020; April 29, 2021; March 3, 2022; and July 18, 2022, confirm that he was once indebted to each of the creditors listed in the SOR. (Government Exhibits 3, 4, 5 and 6.) Applicant began working for his current employer in February 2018. This is his first time applying for a security clearance.

Applicant explained that his financial problems started as a result of his compensation package changing, which significantly reduced his income. Applicant explained that at his previous place of employment, he held a sales job and was given an on-target earnings package of \$120,000. For three years, from 2015 through 2017, he over achieved and earned about \$180,000 annually, much more than his target earnings. Because he was earning too much, his company restructured his competitive plan, and for two years he was not earning even the on-target earnings. He believes he made about \$100,000 those two years. As a result, he fell behind on many of his bills. He stated that he managed to keep up with the credit accounts that he had open, including his children's school tuition and his student loan.

After leaving his previous employer, Applicant liquidated his 401k and borrowed between \$50,000 and \$75,000 to keep his family afloat while he built his "sales pipeline" at his new job. With his current employer, Applicant stated that his compensation package has allowed him to pay back his delinquencies and satisfy his past due debts.

(Tr. p. 48.) Applicant explained that he consolidated his debts and paid them off. (Tr. p. 48.) Applicant also stated that the last two years, 2020 and 2021, he has built up his “sales pipeline” and earned close to \$350,000 annually. (Tr. pp. 55, 56, and 61.) He has also been able to build up some savings. Applicant stated that he has only three revolving credit cards and pays cash for everything else. He and his fiancé are planning to purchase a house next year.

Applicant explained that after taxes he now brings home about \$2,100 every two weeks. He also receives periodic commission checks based upon his sales. He testified that he is expecting a commission check soon for about \$26,000. Without touching his commission check, after paying his regular monthly expenses, such as rent, gas, food, and electricity, he is still “in the black” every month. (Tr. p. 51.) In savings, he currently has about \$100,000 in his 401K. He states that he always files his annual income tax returns in a timely fashion. Applicant earns sufficient monies to be able to resolve all of his delinquent debts.

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

1.a. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$7,138. Applicant contacted the creditor and settled the debt on December 21, 2021, for \$4,289. (Tr. p. 59, and Applicant’s Exhibit J.) The debt is no longer owing.

1.b. Applicant was indebted to a resort for an account that was charged off in the approximate amount of \$3,500. This was for a timeshare that Applicant purchased. Applicant was issued a 1099-C (Cancellation of Debt) for tax year 2018, and the amount of the debt discharged was \$3,376. (Applicant’s Exhibit H.) The debt is no longer owing.

1.c. Applicant was indebted to a bank for an account that was charged off in the approximate amount of \$2,489. Applicant submitted a receipt showing that the account was agreed to be settled on October 20, 2021. On October 19, 2021, Applicant made a payment of \$1,000 to the creditor. A second payment was made on October 29, 2021, in the amount of \$1,489.37. The remaining balance owed is \$181. (Applicant’s Exhibit G.)

1.d. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$16,235. Applicant stated that this is a delinquent credit card debt. Applicant’s credit report dated July 2022 shows that the debt was charged off. (Applicant’s Post-Hearing Exhibit A.) Applicant has not paid the debt. The debt remains owing.

1.e. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$13,814. Applicant stated that this was a delinquent credit card debt. Applicant stated that he hired an attorney on January 20, 2020, to assist with settling the debt. (Applicant’s Post-Hearing Exhibit A.) Applicant provided nothing

more. There is no evidence to show whether Applicant paid the debt or whether he allowed it to fall off his credit report. The debt remains owing.

1.f. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$7,000. Applicant contends that this is the same debt as the one set forth in paragraph 1.a. As mentioned above, the debt was settled for \$4,289, on December 21, 2021. (Applicant's Post-Hearing Exhibit A.) The debt is no longer owing.

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 to satisfy debts; and

- (c) a history of not meeting financial obligations.

Through no fault of his own, Applicant experienced financial hardship when his employment compensation plan changed with little notice, and he was suddenly not earning sufficient monies to support the lifestyle he had become accustomed to. As a result, he fell behind on his financial obligations. 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 now working for another employer and earning substantially more money than he previously did. He states that he had resolved all of the delinquent debts in the SOR. (Tr. p. 48.) However, he has not presented evidence to show that he has resolved the two largest debts which are of most concern. Applicant still owes two separate creditors a total of approximately \$29,000. Applicant testified at the hearing that the two largest debts, namely the debts set forth in 1.d., and 1.e., were credit cards debts that he consolidated, liquidated his 401k, and paid off. (Tr. pp. 57 through 60.) There is no evidence in the record to show this. In his Post-Hearing Exhibit A, Applicant stated the debt in 1.d. was charged off, which means that he still owes the debt. In regard to the debt in 1.e., he stated that he retained an attorney on January 20, 2020, to assist him in settling the debt, but provided nothing more to show that he has paid the debt or allowed it to fall off of his record. Without more, it can only be assumed that he allowed it to fall off of his credit report, which does not show responsible behavior. Since Applicant is now earning about \$350,000 annually, it is incomprehensible as to why he did not pay or otherwise resolve these larger debts. Applicant has not demonstrated sufficient responsibility, good judgment, reliability, and trustworthiness, to be granted access to classified information. Mitigating conditions 20(a), 20(b), and 20(d) do not establish full mitigation here.

There is insufficient evidence in the record to show that Applicant's delinquent debts have been or are being resolved. 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. Applicant must resolve the largest of his delinquent debts and remain financially responsible in the future to be eligible for 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 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., 1.b., 1.c., and 1.f.	For Applicant
Suparagraphs 1.d. and 1.e.	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