



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



In the matter of:)	
)	
)	ISCR Case No. 20-03234
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: Pro se

August 29, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 2, 2017, Applicant submitted a security clearance application (e-QIP). On February 25, 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 March 20, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 12, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on June 8, 2022, and the hearing was convened as scheduled on June 27, 2022. The Government offered five

exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. Applicant offered no exhibits, but testified on his own behalf. The record remained open following the hearing, until close of business on July 5, 2022, to allow Applicant the opportunity to submit some supporting documentation. Applicant submitted two separate submissions, referred to as Applicant's Post Hearing Exhibits A through E, which were admitted into evidence without objection. DOHA received the final transcript of the hearing (Tr.) on July 7, 2022.

Findings of Fact

Applicant is 50 years old and is married with three children ages 15, 11, and 9. He has a Bachelor's degree in Aeronautical Engineering. He holds the position of Electrical Test Engineering 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 five separate creditors totaling \$41,320, which consists of delinquent medical and charged-off accounts. In his answer, Applicant admits the allegations with explanations. (Applicant's Answer to SOR.) Credit reports of the Applicant dated November 25, 2017; April 11, 2019; April 14, 2020; and May 17, 2021, confirm this indebtedness. (Government Exhibits 2, 3, 4, and 5.)

Applicant began working in the defense industry in 1997, and was hired on with his current employer in 2007. He earns about \$200,000 annually. Applicant's wife also works outside of the home. She earns about \$20,000 annually. Applicant explained that his wife has always handled paying the bills, and keeping track of the household finances. Applicant explained that his youngest child was born two months premature. At that time, things were very hectic. He lost track of the bills, and things fell behind. Applicant stated that at some point a collection agency contacted him looking for payment. Applicant testified that he set up a payment arrangement with the collection agency, automatic monthly payments to be deducted out of Applicant's bank account to cover his debts. Applicant cannot recall which creditor or creditors he paid. He believes the debt to be about \$20,000 that he paid through automatic payments over the course of three years. Applicant stated that he felt as though he was addressing his past due indebtedness. (Tr. p. 20.) He has no documentation to substantiate this testimony. Applicant stated that he forgot to report his delinquent debt to his security officer due to the many distractions. (Tr. p. 21.) Applicant stated that he has not been contacted by any creditor for several years. (Tr. p. 33.)

At the hearing, Applicant testified that he has done nothing to find out whether he had paid the debts listed in the SOR, or whether they remain owing. (Tr. p. 34.) The following delinquent debts are of security concern:

1.a. A delinquent debt owed to a creditor was placed for collection in the amount of \$557. Applicant had no documentation to show whether he has paid the debt. Following the hearing, Applicant's submitted a receipt dated June 27, 2022, for payment of the debt in the amount of \$1,032.74, which includes the debt of \$557, plus interest and convenience fees. (Applicant's Post-Hearing Exhibit B.) The debt is no longer owing.

1.b. A delinquent debt owed to a bank was charged-off in the amount of \$38,255. Applicant believes it was a credit card or line of credit. Applicant acknowledged that the account was last paid in May 2013. Applicant did not know the status of this debt. (Tr. p. 25.) Following the hearing, Applicant indicated that he contacted the creditor and set up a payment arrangement that he plans to follow. There is no documentation to support this claim. (Applicant's Post-Hearing Exhibit F.) The debt remains owing.

1.c. A delinquent debt owed to a creditor was charged-off in the amount of \$393. Applicant believes this was a credit card. Applicant believes that the debt was last paid in August 2011. Applicant did not know the status of the account. (Tr. p. 27.) Following the hearing, Applicant submitted a receipt from the creditor showing that the account was paid in full on November 30, 2015. (Applicant's Exhibit D.) The debt is no longer owing.

1.d. A delinquent debt owed to a creditor was placed for collection in the amount of \$2,058. Applicant did not remember what the debt was for or whether he had paid it. (Tr. p. 27.) Following the hearing, Applicant stated that he tried to contact the creditor but was unable to reach the company for information. Applicant contends that the account is closed, and is not listed on his most recent credit report dated June 28, 2022, from Equifax. (Applicant's Exhibit C.) The debt is no longer owing.

1.e. A delinquent debt owed to a creditor was placed for collection in the amount of \$57. Applicant believes this to be part of his son's neonatal intensive care unit (NICU) expenses. Applicant stated that his most recent credit report dated June 28, 2022, does not show this debt as owing, from Equifax. (Applicant's Exhibit C.) 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. Three are potentially applicable in this case:

- (a) Inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

It is difficult to determine whether Applicant incurred excessive delinquent debt that he could not afford to pay, or whether he simply ignored his debt for many years and focused on other priorities. In either case, his actions or inactions both demonstrated a history of not addressing his responsibility to pay his delinquent debt. 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, 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;

(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 or provides evidence of actions to resolve the issue.

At the hearing, Applicant knew very little about his financial indebtedness. He provided no documentation to show that he had set up payment arrangements, made payments, or had any contact with his creditors. In fact, there was nothing that Applicant had done to resolve the delinquent debts set forth in the SOR. Following the hearing, Applicant made some effort to obtain some information concerning the debts. He has paid off two of the smaller debts and two others are no longer reflected as owing on his most recent credit report. However, the largest and most concerning of the debts remains owing, in the amount of \$38,255, Applicant claims that he has now contacted the creditor and set up a payment plan. However, there is no documentation to support his claim.

Applicant has been financially irresponsible for many years. Even though life brings obstacles, one must continue to be responsible to pay one's bills in a timely fashion. Applicant contends that this hectic period in his life occurred shortly after his youngest child was born, who is now 9 years old. Applicant has had sufficient time since then to resolve his delinquent debts. The fact that he waited until after the hearing to do anything about his financial issues are of great concern to the Government and shows unreliability, untrustworthiness, and poor judgment. Even if Applicant has recently set up a payment plan to pay his debt for \$38,255, he owes a significant amount of money to the creditor for a debt he incurred years ago. Under the circumstances, Applicant has not demonstrated that he is sufficiently responsible to access classified information. Mitigating Conditions 20(a), 20(b), 2(c), 20(d), and 2(e), do not show full mitigation.

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.

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
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c. through 1.e.	For 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