



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



In the matter of:)	
)	
)	ISCR Case No. 20-01194
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Allison Marie, Esquire, Department Counsel

For Applicant:
Pro se

August 31, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 6, 2018. On August 28, 2020, 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on October 14, 2020, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 25, 2021. The case was assigned to me on April 5, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on May 9, 2022. The case was heard as scheduled on July 6, 2022.

The Government offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf. He presented no documents at the hearing. DOHA received the transcript of the hearing on July 13, 2022. (Tr. at 12-18.)

Findings of Fact

Applicant is 41 years old. He enlisted in the U.S. Army in 2002 and was medically separated under Honorable conditions in February 2013 at the pay grade of E-7. He married in 2001 and has two children, ages 8 and 18. He and his wife separated in or about March 2015 and divorced in 2018. After his military discharge, Applicant pursued a college education and obtained an associate's degree in 2015. He earned a bachelor's degree in May 2018. He was unemployed while he attended his undergraduate classes and was financially supported by disability benefits from the U.S. Department of Veterans Affairs (VA). He is presently taking post-graduate courses in pursuit of a master's degree. He began working for a Defense Department contractor in 2018 and was employed as a research associate. In 2020 he began working for a different Government contractor as a research coordinator. Applicant held a clearance while serving in the Army. He is now seeking to obtain a security clearance in relation to his employment. (Tr. at 10-11, 20-22, 24-25; GE 1 at 13, 21; GE 2 at 1.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges that Applicant is ineligible for clearance because he is financially overextended with delinquent debts and therefore is potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR identifies seven charged-off or past-due debts in collection owed by Applicant totaling about \$39,000. In his Answer, Applicant admitted two of the SOR allegations. The existence and amounts of these debts is also supported by credit reports in the record dated March 12, 2020; May 21, 2019; and February 9, 2018. (GE 4-6.)

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

1.a. Debt charged off in the approximate amount of \$14,774. Applicant denied this debt in the Answer. In August 2013, Applicant borrowed funds to purchase a vehicle after his discharge from the Army. He was unemployed and in about March 2014 he could not afford the loan payments. The vehicle was voluntarily repossessed. He claimed that he

was advised in writing that he owed nothing further on the debt. Applicant testified that the document was destroyed with much of his personal property in a hurricane. He was advised about this outstanding debt on his credit report at his July 2018 background interview. When he received the SOR, he saw that the debt remained an unresolved security concern. He has taken no further action because he believed that he does not owe anything on this loan. This debt is not resolved. (Tr. at 34-38; GE 2 at 7; GE 4 at 1; GE 5 at 1; GE 6 at 3.)

1.b. Debt charged off in the approximate amount of \$11,400. Applicant incurred this debt to purchase a car for his then-wife. He could not afford to continue to make the payments, and he surrendered the car to the lender. The original amount of the loan was about \$46,000. The loan was charged off in the amount of \$27,000. When he returned the vehicle in 2014, he did not believe that he owed anything further on the loan. He learned about the debt during his background interview in 2018 and again in the SOR. He has no documentation to show that the debt was fully repaid with the return of the car. He has taken no further steps to resolve the debt since he returned the vehicle. This debt is not resolved. (Tr. at 41-43; GE 2 at 7; GE 4 at 2; GE 5 at 2; GE 6 at 3.)

1.c. Debt charged off in the approximate amount of \$6,633. This debt is for a third auto loan. According to the credit reports in the record, Applicant took out this loan in 2012 and stopped paying on the loan in 2013. In his background interview, he recognized the debt as his loan for a car he purchased in 2012. At the hearing, he testified that he disputed this debt because he never had a third vehicle. He believed this debt is not his obligation. He suggested that it could be his father's debt since their names are almost identical. He has no documentation to support his claim that the debt is not his liability. The credit reports reflect that he stopped paying on this loan in June 2013 before he purchased in August 2013 the car with the loan discussed in 1.a, above. The Government established by substantial evidence that this debt is owed by Applicant. This debt is not resolved. (Tr. at 45-47; GE 2 at 6-7; GE 4 at 2; GE 5 at 2; GE 6 at 3.)

1.d. Medical collection debt in the approximate amount of \$952. Applicant admitted this debt in the Answer. His statement in his Answer that he is "currently mak[ing] payments on this [debt]" is incorrect. He testified that he personally visited a nearby VA hospital about this bill, and he believes that the VA has taken responsibility for the debt. He has no documentation to support this belief. This debt remains on the Government's most recent credit report in the record. This debt is not resolved. (Tr. at 26-30; GE 4 at 2; GE 5 at 2.)

1.e. Debt charged off in the approximate amount of \$3,089. This debt is for a payday loan Applicant incurred a number of years ago. He admitted the debt in the Answer. He testified that he paid the debt for a period and then he stopped receiving correspondence from the creditor. He wrote in the Answer that he "assumed [the loan] was paid off." He added that he would follow up with the creditor. He called the creditor and was advised that the debt was resolved. He received nothing in writing. When he received the Government's evidence in May or June 2021, he learned that the debt

remained on his credit report. He has taken no further steps to resolve this old debt. This debt is not resolved. (Tr. at 30-33; GE 2 at 7; GE 6 at 4.)

1.f. Collection debt in the approximate amount of \$1,374. This debt arose out of a December 2011 payday loan that Applicant defaulted on in approximately December 2012. He was experiencing serious financial problems at that time. He has done nothing since 2012 to repay this loan. This debt is not resolved. (Tr. at 48-51; GE 2 at 7; GE 5 at 2; GE 6 at 4.)

1.g Collection debt in the approximate amount of \$1,128. This debt is for a gym membership that became delinquent in August 2017. Applicant disputed this debt in the Answer claiming that he never had a gym membership. When he learned about the debt during his background interview, he called the gym and advised the creditor that he was never a member. He mailed the gym a copy of a bill to show the creditor that he lived in another state. The debt appears on a credit report submitted by the Government. Applicant provided no documentation in support of his claimed dispute. This debt is not resolved. (Tr. at 51-55; GE 2 at 7; GE 6 at 8.)

Mitigation

Applicant has provided little evidence in mitigation of the security concerns raised by his financial delinquencies. He testified that he has purchased a home and new vehicles, but he provided no budgetary information that would support a conclusion that he is presently living within his means and has the financial ability to repay his delinquent debts. (Tr. at 10.)

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 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.

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.

As of the date the SOR was issued, Applicant owed a total of approximately \$39,000 on seven past-due debts. These facts are established by the three most recent credit reports in the record (GE 4-6). Accordingly, the foregoing disqualifying conditions are established, and the burden of proof shifts to Applicant to mitigate those security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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;
- (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 taken to resolve the issue.

Overall, Applicant has not established any of the above mitigating conditions. The debts remain outstanding and cast doubt on Applicant's reliability, trustworthiness, and judgment. He has not acted responsibly in addressing his debts since he became employed in 2018. He has not provided credible evidence that he has paid or otherwise resolved these debts. He has not initiated a good-faith effort to repay the debts nor has he provided any documented proof to substantiate the basis of his disputes of certain debts. Applicant's claim that he has no documents to support his position that some of the debts have been resolved because his personal property was lost due to hurricane damage is unconvincing. He could have tried to contact the creditors and sought new

documentation. Moreover, Applicant's claims of resolutions or disputes of certain debts are not credible in light of the fact that the debts remain on his credit reports.

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. Applicant failed to mitigate the security concerns raised by his financial situation. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

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.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