



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



In the matter of:)	
)	
)	ISCR Case No. 21-01240
)	
)	
Applicant for Security Clearance)	

Appearances

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

For Applicant:
Pro se

September 19, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 24, 2019. On June 14, 2021, the Department of Defense Consolidated Adjudications Facility (DoD 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 July 17, 2021, and he requested his case be decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case. In or about April 2022, Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 27, 2022. The case was initially assigned to another judge and then was reassigned to me on May 18, 2022. The Defense Office of Hearings and Appeals (DOHA) initially scheduled the hearing for June 28, 2022. Due to a scheduling conflict, I rescheduled the hearing for July 11, 2022. DOHA issued an Amended Notice of Video Teleconference Hearing on May 16, 2022. The case was heard as rescheduled.

The Government offered Government Exhibits (GE) 1 through 7. GE 1 was admitted without objection. Applicant objected to the admission of GE 3-7, but I overruled his objection and admitted the exhibits. Applicant objected to the admission of GE 2, and I sustained his objection. Applicant testified on his own behalf and presented 11 documents, which I marked as Applicant Exhibits (AE) A through K (AE K consists of documents provided by Applicant to the Government investigator and are attached to GE 2) and admitted without objection. DOHA received the transcript of the hearing on July 18, 2022. (Tr. at 17-38, 62.)

Findings of Fact

Applicant is 63 years old. He was born in a foreign country and immigrated to the United States as a political refugee in 1981 at the age of 22. He became a U.S. citizen in June 1989. He married in 2002 and divorced in March 2016. He and his former wife have two children, ages 18 and 15. He graduated from high school in 1979 in the country of his birth. He has taken college classes in the United States and earned a certificate. In 2015 he applied for a security clearance, which was granted in May 2016 (or possibly in 2018, Tr. at 42), so that he could work for a U.S. Government contractor as a linguist in the country of his birth. He is seeking to retain his clearance in relation to his employment as a linguist with a different Government contractor. He has worked for that contractor since November 2019. (Tr. at 10-16, 40-46; AE I at 1, 2.)

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 potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR identifies eight charged-off debts or debts in collection owed by Applicant totaling about \$36,000. In his Answer, Applicant admitted all of the SOR allegations with additional explanations regarding his understanding of the status of the debts. The existence and amounts of these debts is also supported by credit reports in the record dated July 6, 2020, November 3, 2020, May 26, 2021, and April 27, 2022. (GE 3 to 5 and 7.)

The background and current status of each of the debts alleged in the SOR is as follows:

1.a. Credit-card debt charged off in the amount of \$10,202. Applicant opened this credit-card account in 2012 and defaulted on the account in January 2016. The credit card was used for business and personal expenses. Applicant has made no subsequent payments on this account. He believes that the statute of limitations has expired on this debt. He testified that he contacted the creditor when he became employed by his current employer in 2019, but he was unable to pay the amount demanded by the creditor. He did not contact the creditor earlier when he first began working in as a linguist in June 2018. This debt is not resolved. (Tr. at 48-54; GE 3 at 2; GE 4 at 2; GE 5 at 2; GE 7 at 3; AE A at 10-11.)

1.b. Credit-card debt charged off in the amount of \$1,859. Applicant opened this credit-card account in 2013 and defaulted on the account in March 2016. The account was charged off. Applicant has made no payments on this account to resolve this debt. This debt is not resolved. (Tr. at 52; GE 3 at 3-4; GE 4 at 4; GE 5 at 3; GE 7 at 4.)

1.c. Credit-card debt charged off in the amount of \$2,448. Applicant opened this credit card account in 2012 and defaulted on the account in February 2016. The account was charged off. Applicant has made no subsequent payments on this account. This debt is not resolved. (Tr. at 52; GE 3 at 4; GE 4 at 4; GE 5 at 3.)

1.d. Credit-card debt charged off in the amount of \$4,998. Applicant defaulted on this account, and the creditor placed it for collection. Applicant has made no further payments on this account. This debt is not resolved. (Tr. at 55-58; GE 4 at 3; GE 5 at 2.)

1.e. Credit-card debt charged off in the amount of \$3,790. Applicant defaulted on this account, and the creditor placed it for collection. Applicant has made no payments to resolve this account. This debt is not resolved. (Tr. at 57-58; GE 4 at 3; GE 5 at 2-3.)

1.f. Retail store credit-card debt charged off in the amount of \$654. Applicant opened this credit card account in 2011 and defaulted on the account in February 2016. The account was charged off. Applicant claimed that this debt was paid off through a payment to a collection agency. The names of the original creditors and the amounts of the debt do not match to support his claim. See discussion in the Mitigation section below. Although Applicant believes he paid the collection agency for this debt, he has not documented that payment. This debt is not resolved. (Tr. at 58-66; GE 3 at 5; GE 4 at 5; GE 5 at 4.)

1.g Loan account charged off in the amount of \$6,342. Applicant opened this account in 2012 for his business in the original amount of \$21,000 and after repaying much of the loan, he defaulted on the account in February 2015. The account was charged off, and the creditor placed it for collection. Applicant claims that he paid this

account, but did not provide any documentation that he did so. The debt appears on his May 2021 credit report in the record (GE 3) as unpaid and sold/transferred to a third party. This debt is not resolved. (Tr. at 66; GE 3 at 5; GE 4 at 5; GE 5 at 4.)

1.h Collection account on a credit-card debt charged off in the amount of \$5,973. Applicant defaulted on this account, and the creditor placed it for collection. In his Answer Applicant wrote that he entered into a payment plan with the collection agency in 2019. In support of that statement, he provided to a Government investigator a letter from the collection agency, dated July 31, 2020, confirming Applicant's payment arrangement to pay this debt with a balance of \$5,973.16. Under the terms of his plan, he was obligated to pay \$5.00 per month for 12 months beginning August 30, 2020. He provided no documentation evidencing his payments. The terms of the plan make no mention of any future payments beyond the \$60 paid over the first year. Applicant claimed that he made additional payments totaling about \$2,800, but he provided no documentation to support that claim and no evidence from the creditor that the debt had been resolved. In light of the available record evidence, this debt is not resolved. (Tr. at 74-75; GE 4 at 3; GE 5 at 2; AE K at 2-3.)

Mitigation

In 2001, Applicant started his own retail business and subsequently expanded the business into wholesale and import/export. His business faced new regulations and taxation in 2014 and his business ultimately failed in 2015 or 2016, causing the numerous defaults on the credit cards and a loan discussed above. His marriage also failed that year and he filed for divorce. His children were eight and 11 years old at that time, and their mother declined to have custody of the children, leaving them with Applicant. He was 56 years old at that time, and he felt he had limited job opportunities. He experienced a period of underemployment or unemployment before beginning work in July 2018 as a linguist. (Tr. at 12-16.)

Applicant discussed his credit problems with a non-profit organization. He was counseled to consolidate all of his debts and pay a monthly payment or to file for bankruptcy. He had insufficient income to pay a consolidation loan, and he did not want to file for bankruptcy. He explained his situation with his creditors and none of them pursued legal actions. Two creditors transferred their debts to collection agencies. Applicant has worked with the collection agencies, as discussed above and below. (Tr. at 14-15, 16, 73-74.)

Applicant was hired as a linguist by a U.S. Government contractor in late 2014. He disclosed his financial problems in his first security clearance application in 2015. In July 2018 he was deployed to a war zone. His ex-wife took custody of their children and Applicant paid her child support. He worked for that employer until October 2019. In November 2019 he began working for a new employer as a linguist supporting a different U.S. agency. (Tr. at 15-16.)

In his 2015 e-QIP Applicant disclosed that he had \$13,000 of delinquent credit-card debt and a \$7,000 delinquent loan with the creditor identified in 1.g, above. He wrote that the cause of the delinquencies was a “bad economy.” In his 2019 e-E-QIP he provided some additional information about his delinquent debts. In another exhibit and at the hearing, Applicant argued that he was granted a clearance in 2016 or 2018 after fully disclosing his history of delinquent debts in his 2015 e-QIP and during his background interviews. (Tr. at 15, 42; GE 1 at 39-43; AE D at 109-110; AE I at 2.)

Applicant submitted two reference letters. One is from Applicant’s supervisor who strongly supports Applicant in his effort to establish mitigation of the security concerns raised by his financial delinquencies. He describes Applicant as “thorough, conscientious, and kind” The reference provider’s command handles sensitive matters in a U.S. embassy in a foreign country. He values Applicant’s discretion and dedication. The second reference is from a U.S. military officer who has worked with Applicant for several months. He praised Applicant’s skills as a linguist.

Applicant also provided a Certificate of Appreciation he received in 2020 from the military command he supported as a linguist. The Certificate refers to Applicant’s performance as a linguist as “exceptional.”

At the time of Applicant’s background interview in 2020, he provided a document, dated July 30, 2020, evidencing a payment plan with a creditor that is not listed in the SOR. The amount of the delinquent debt is stated to be \$813, and the agreement provides for a single payment of \$244. This debt is only listed in the Government’s credit reports dated July 6, 2020 and November 3, 2020 (GE 5 and GE 4, respectively), which reflect a default, charge off, and referral to collection. The account was last active in 2016. It is not clear why this debt was not listed in the SOR. Applicant sought to explain that this debt was alleged in 1.f of the SOR. The names of the original creditor listed in the SOR and the payment plan document do not match and therefore, do not support that argument. The record evidence is incomplete regarding the history of this delinquency and payment plan. (Tr. at 60-64; GE 4 at 5; GE 5 at 3.)

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 approximately \$30,000 for the eight alleged delinquent debts. Applicant's admissions in his Answer and the credit reports in the record establish the existence of these debts and the application of the above potentially disqualifying conditions. Accordingly, the burden 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;
- (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.

The record shows that Applicant has not responsibly managed his substantial debts resulting from his business failure and subsequent unemployment. None of the debts alleged in the SOR have been resolved. His financial problems began with his business failure in 2015 or 2016, and his divorce in 2016. He also had a period of underemployment or unemployment in the following year or two. However, his lack of

action to resolve the SOR debts since then does not show responsible conduct on his part. He began earning an income in 2018 as a linguist and has been working overseas for most of the past four years without taking responsibility for his debts. None of the mitigating conditions wholly apply to the facts of this case. Applicant has not mitigated the Financial Considerations concern.

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. I have given significant weight to Applicant's service to the U.S. Government as a linguist, and the sacrifices and dangers that his work requires. His evidence in mitigation, however, does not outweigh the security-significant failure by Applicant to address and resolve his debts from a number of years ago. He let his debts become unenforceable due to their age without making payment arrangements to resolve them. 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.h:

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