



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



In the matter of:)
)
) ISCR Case No. 20-02444
)
)
 Applicant for Security Clearance)

Appearances

For Government:
Erin P. Thompson, Esquire, Department Counsel

For Applicant:
Pro se

November 21, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on February 26, 2020. (Item 3.) On November 19, 2020, 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). (Item 1.) 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 December 2, 2021, and requested his case be decided on the written record in lieu of a hearing. On June 3, 2022, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to Applicant, who received the file on July 7, 2022. (Item 2 at 3.)

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to submit any additional information. The case was assigned to me on October 3, 2022. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 39 years old, unmarried, and has no children. He received a high school diploma in 2001. Applicant has been employed by a defense contractor as a fabricator since March 2020 and seeks to obtain national security eligibility and a security clearance in connection with his employment. (Item 3 at Sections 1, 12, 13A, 17, and 18; Item 4 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. In his Answer, Applicant admitted all of the SOR allegations. The existence and amounts of these debts are also supported by Applicant's disclosures in his e-QIP and the credit reports in the record dated September 24, 2020, and March 21, 2020. (Items 1, 3, 5, and 6.)

In his e-QIP, Applicant explained that he incurred the debts set forth in the SOR when he became an insurance agent and was unsuccessful in generating sales of policies and income to support himself. The status of the matters set forth in the SOR is as follows:

1.a. Debt charged off in the approximate amount of \$10,974. Applicant opened this line of credit account with Bank A in March 2013. He defaulted on repaying the line of credit in July 2016. He has made no further payments on this account. This debt is not resolved. (Item 3 at 29-30; Item 4 at 2; Item 5 at 2; Item 6 at 6.)

1.b. Debt charged off in the approximate amount of \$8,610. Applicant opened this installment loan account with Bank A in August 2014. He defaulted on repaying the loan in June 2016. He has made no further payments on this loan. This debt is not resolved. (Item 3 at 30-31; Item 4 at 2-3; Item 5 at 2; Item 6 at 6.)

1.c. Debt charged off in the approximate amount of \$3,151. Applicant opened this credit-card account with Bank A in June 2011. He defaulted on repaying the account in August 2016. He has made no further payments on this account. This debt is not resolved. (Item 3 at 28-29; Item 4 at 3; Item 5 at 3; Item 6 at 6.)

1.d. Debt charged off in the approximate amount of \$729. Applicant opened this credit-card account with Bank B in August 2018. He defaulted on repaying the account in February 2020. He has made no further payments on this account. This debt is not resolved. (Item 3 at 32-33; Item 4 at 4; Item 5 at 3; Item 6 at 5.)

1.e. Debt placed for collection in the approximate amount of \$310. Applicant defaulted on paying for his satellite TV service in about 2019. The creditor referred the account to a collection agency. Applicant blamed the debt on his roommates, who refused to contribute to pay this bill. He has made no payments on this account. This debt is not resolved. (Item 3 at 31-32; Item 4 at 3-4; Item 6 at 6.)

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 \$24,000 on five past-due debts. Applicant’s admissions in the Answer and the two credit

reports in the record establish these facts. Accordingly, the foregoing disqualifying conditions are applicable, and the burden of proof shifts to Applicant to mitigate the security concerns raised by his conduct.

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 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.

AG ¶ 20 (a) is not established. Applicant's debts arose under different circumstances and at different times, including as recently as 2019 and 2020. Applicant has presented no evidence to show a change in his behavior. Additional delinquencies are likely to recur. His behavior casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20 (b) only partially applies. Three of his debts are the result of his unsuccessful work as an insurance agent, which arguably was a circumstance beyond his control. He has not, however, acted responsibly under the circumstances. He has made no effort to resolve those debts since 2016 and he has in fact incurred two additional delinquent debts since then.

AG ¶¶ 20 (c) and (d) have not been established. Applicant provided no evidence that he has received any financial counseling or that his delinquent debts are being resolved. Similarly, he has provided no evidence that he has made any payments to those creditors.

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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding his financial considerations. He has not minimized the potential for pressure, coercion, or duress. He has also not shown that there is little likelihood of recurrence. Overall, the record evidence creates substantial doubt 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.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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge