



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



In the matter of:)	
)	
)	ISCR Case No. 20-03757
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

November 21, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 16, 2019. On March 26, 2021, 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 May 20, 2021 and April 21, 2022, and requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on August 2, 2022. The case was assigned to me on August 16, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on September 12, 2022. The case was heard as scheduled on October 6, 2022.

The Government offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant and his mother both testified. He also presented eight character reference letters, which I marked as Applicant Exhibits (AE) A through H and admitted into the record without objection. I left the record open to give him the opportunity to supplement the record. On October 30, 2022, he timely submitted an email and five documents. I have marked the documents and the email as AE I through N and admitted them without objection. The next day he submitted an email with additional information, which I have marked as AE O and admitted without objection. DOHA received the transcript of the hearing on October 13, 2022. (Tr. at 13-21.)

Findings of Fact

Applicant is 26 years old. He graduated from high school in 2014 and enlisted in the U.S. Navy later that year. He received non-judicial punishment in 2016 for his drug use and was reduced in rank to Fireman (E-3). He was discharged from the Navy under other than honorable conditions in July 2017. He has not used marijuana since testing positive in 2016. In July 2019 he began working for a Defense Department contractor as an instructor. He held a Secret security clearance during his service in the Navy. He is now seeking to obtain a security clearance in relation to his employment. Applicant is unmarried. He has cohabitated with a woman for the last three years, and they have a young child. His girlfriend also has a child from a prior relationship. Applicant and his girlfriend intend to marry at some point in the future. (Tr. at 23-28, 66; GE 1 at 20-21, 34.)

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 ten charged-off or past-due debts in collection, owed by Applicant and totaling about \$27,000. The SOR also alleges that Applicant failed to file his Federal income tax return for tax year (TY) 2017 in a timely manner. In his Answer, Applicant admitted all of the SOR allegations. The existence and amounts of these debts are also supported by credit reports in the record dated August 2, 2022; January 22, 2020; and August 6, 2019. (GE 2-4.)

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

1.a. Unfiled TY 2017 Federal tax return. Applicant did not receive a copy of his W-2 for TY 2017, following his discharge from the Navy during that tax year. After his discharge, he no longer had access to an electronic copy of his W-2. He made several attempts to obtain the tax documentation from the Defense Finance and Accounting Service, but was unsuccessful. As a result, he testified that he was unable to file his tax return for that year. Applicant believed that he was owed a refund for TY 2017 because his only income that year was his Navy pay for seven months. After the hearing, he obtained from the IRS his "Form W-2 Wage and Tax Statement" for TY 2017. He submitted the Statement, which reflects that Applicant's gross income for that year was about \$12,000 and that he had paid withholding taxes of about \$1,000. Applicant advised that he used the information from the Statement to prepare and file his tax return for TY 2017. This tax filing delinquency has been resolved. (Tr. at 30-34; AE M; AE N.)

1.b. Debt placed for collection in the approximate amount of \$727. Applicant failed to pay this internet and cable account in 2015 while he was serving in the Navy and had relocated to a new apartment. The debt was referred to a collection agency. Applicant worked with his mother to address debts on his credit report. His mother testified that Applicant paid a settlement of this debt. This debt is resolved. (Tr. at 34-38, 73; GE 4 at 3; GE 5 at 4.)

1.c. Debt placed for collection in the approximate amount of \$623. Applicant failed to pay this electric bill after he relocated in 2015. Applicant's mother believes that she and her son paid this debt. This debt is resolved. (Tr. at 38-39, 74; GE 4 at 3; GE 5 at 4-5.)

1.d. Debt placed for collection in the approximate amount of \$2,089. Applicant failed to pay this account for a cellphone and cellular service in about 2015 or early 2016. Applicant and his mother settled this account in 2020 for less than the full amount. This debt is resolved. (Tr. at 39-41, 72; GE 2; GE 4 at 3; GE 5 at 4.)

1.e. Debt placed for collection in the approximate amount of \$1,010. Applicant failed to pay this account for a cellphone service in about 2016. Applicant does not recall if he paid this debt, but his mother testified that Applicant paid a settlement of this debt. This debt is resolved. (Tr. at 42-44, 73; GE 4 at 4; GE 5 at 4.)

1.f. Debt placed for collection in the approximate amount of \$7,936. Applicant defaulted on this auto-loan account with a credit union in 2017. He purchased the car in late 2015 after returning from a deployment. His girlfriend at the time damaged the car in an accident. She did not have a driver's license. Applicant believed that a claim to repair the car would not be covered by insurance. The car needed a safety inspection, and it would have cost Applicant about \$3,000 to repair the car so that it would pass the inspection. He stopped paying the car loan because he could not drive the car. He did not return the vehicle to the dealer. He abandoned it and drove across the country with a friend who had also been discharged from the Navy. Prior to the hearing Applicant had

not taken any steps to address this debt. After the hearing he contacted the creditor with the guidance of his mother. Applicant entered into a payment plan with the creditor under which he agreed to pay this debt with 310 bi-weekly payments of \$25. Under the terms of this plan, the final payment is due September 18, 2034. He submitted a letter from the creditor confirming the terms of the payment plan. Applicant has begun the process of resolving this debt. (Tr. at 45-51; GE 2 at 5; GE 3 at 1; GE 4 at 4; GE 5 at 3; AE L.)

1.g. Debt placed for collection in the approximate amount of \$2,108. Applicant defaulted on this credit-card account with the same credit union as the lender referred to in 1.f, above. He opened this account when he was in Navy boot camp. He stopped paying this account after his separation from the Navy. Applicant explained that he was in bad shape after leaving the Navy. His girlfriend had left him and his father had died in 2016. He admitted that he acted immaturity by just ignoring his debts. After the hearing, Applicant entered into a payment plan with the creditor to begin making 17 bi-weekly payments of \$100. He submitted a letter from the creditor confirming the terms of the payment plan. Applicant has begun the process of resolving this debt. (Tr. at 51-52; GE 2 at 4; GE 4 at 4; GE 5 at 4; AE J.)

1.h. Debt placed for collection in the approximate amount of \$1,415. After his separation from the Navy and his loss of income, Applicant defaulted on this unsecured personal loan account with the same credit union referred to above. After the hearing, Applicant entered into a payment plan with the creditor to repay this debt with 13 bi-weekly payments of \$100. He submitted a letter from the letter from the creditor confirming the terms of the payment plan. Applicant has begun the process of resolving this debt. (Tr. at 55-57; GE 2 at 5; GE 3 at 2; GE 4 at 4; GE 5 at 4; AE K.)

1.i. Debt placed for collection in the approximate amount of \$2,954. In 2017 Applicant also defaulted on this unsecured personal loan account with the same credit union. After the hearing, Applicant entered into a payment plan with the creditor to repay this debt with 111 bi-weekly payments of \$25. Under the terms of this plan, the final payment is due February 1, 2027. He submitted a letter from the creditor confirming the terms of the payment plan. Applicant has begun the process of resolving this debt. (Tr. at 55-57; GE 2 at 5; GE 3 at 2; GE 4 at 4; GE 5 at 4; AE M.)

1.j. Debt placed for collection in the approximate amount of \$7,579. Applicant took out this personal loan at a time he was living with his prior girlfriend, and they were living beyond their means. He acknowledged that he was young and immature and did not know how to manage his finances. He could not pay the loan payments and defaulted. After defaulting, he chose to ignore this debt. Applicant's mother testified that she believes that she and her son resolved this debt. Applicant may have paid this debt, but there is limited evidence that it is in fact resolved. (Tr. at 57-58, 74; GE 3 at 2; GE 4 at 5; GE 5 at 4.)

1.k. Debt placed for collection in the approximate amount of \$502. This debt is for a store credit card account that Applicant could not pay. In 2018 or 20219 he received a call from the collection agency and was offered a settlement of one-half of the debt. He

vaguely recalls paying the settlement either at the time or at a later date. Applicant may have paid this debt, but there is limited evidence that it is in fact resolved. (Tr. at 58-59; GE 3 at 2; GE 4 at 5; GE 5 at 4.)

Mitigation

Applicant and his girl friend jointly have one credit card and a car loan. They pay both accounts monthly. They use the credit card to purchase gas and repay the debt promptly. They do not carry a balance on the credit-card account. Now that he has a family to support, he takes his financial obligations seriously. He and his girlfriend budget their money every week and track their spending. They work hard to live within their means. His girlfriend works as a caretaker for a family member. They save money every month and now have about \$6,000 or \$7,000 in savings for emergencies. Applicant has received financial counseling from his mother. He also receives advice from his co-workers who are financially successful. (Tr. at 59-69.)

Applicant's mother also testified about her son's change in maturity as he has become responsible for his girlfriend, their child, and the girlfriend's other child. He has "stepped up his game." His mother said that he loves his job and is trying to get his finances resolved so that he can "move forward in life." She believes he took a big step by admitting to her that he had been irresponsible with his finances and asking for her advice. She testified that they reviewed his credit report carefully. She then insisted that Applicant call each of his creditors in front of her and work out settlements, which she then paid. She paid about \$4,000 in total for the settlements Applicant was able to reach with his creditors. In return for funding the settlements, she demanded that Applicant turn over his paychecks to her, and she gave him a small amount of spending money. She said that she was "very rough on him" and did not "sugar coat" anything. They addressed the debts with the creditors that said the debts could still be paid and were told by some creditors that the accounts were closed and were not payable at this time. The four credit union debts discussed above were in this category. She concluded her testimony by saying that she was very proud of her son and the mature man he has become. (Tr. at 69-76.)

After the hearing, Applicant advised that he contacted certain unidentified collection agencies to make payment arrangements to resolve some of his remaining debts. Other than the four credit union debts, he was unable to receive any documentation regarding these settlements prior to the extended record closure date. He also wrote that he is applying for a second job to earn additional income to enable him to pay his delinquent debts and to improve his overall finances. (AE O.)

In addition, Applicant submitted eight character letters in support of his case for mitigation. Several of the Navy leaders involved in the educational program on which Applicant works wrote to praise the effectiveness of the program. They also praised his valuable contribution as an instructor. Applicant's manager wrote a detailed statement in which he noted Applicant's "tireless work ethic, high level of integrity, steadfast reliability,

uncompromising standards, heartfelt values, and strict adherence to the Navy's core values of Honor, Courage, and Commitment." Two colleagues also wrote letters praising Applicant's professional expertise and character. (AE A through G.)

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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

As of the date the SOR was issued, Applicant owed a total of approximately \$27,000 on ten past-due debts and had not filed his Federal income tax return for TY 2017. Applicant’s admissions in the Answer and the three most recent 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 five 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Each of the above mitigating conditions have some application to the facts of this case. The debts became delinquent in 2017 under the unusual circumstances of Applicant's untimely separation from the Navy and his related loss of income. Of course, Applicant has himself to blame for using marijuana while serving in the Navy. These circumstances are not likely to recur because Applicant ceased using illegal drugs after his positive drug test in 2016, and he is now committed to working hard to protect his employment and the financial security it provides for his family. Although Applicant did not act responsibly at first, since he began his current job supporting the Navy and starting a family, he has matured and taken responsibility for his delinquent debts. He has received financial counseling from his mother. Although she may not be a professional counselor, she is an advisor with the authority and willingness to impose strict standards of financial responsibility on her son. Professional advisors lack such authority to ensure compliance with their recommendations.

There are clear indications that Applicant's financial problems are being resolved, both with prior payments of debts and his plans to pay larger debts owed to the credit union pursuant to his payment plans. Applicant also filed his delinquent tax return, once he was able to access his W-2 information. He is applying to secure a second job to help pay for his commitments to repay the credit union debts alleged in the SOR and any other debts that may be still be outstanding. Under AG ¶ 20(d) these efforts come too late in

the process to qualify fully as being initiated in good faith, and his lack of a track record in making payments on the credit union's debts undercut full application of this mitigating condition. However, viewing the facts of this case in their entirety, Applicant's history of delinquent debts do not cast doubt on his current reliability, trustworthiness, and good judgment.

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 carried his burden to establish mitigation with his evidence of personal growth and maturity and his resolution of certain debts, his filing of the TY 2017 Federal tax return, and his undertakings to resolve the remaining debts. Applicant's testimony was highly credible and he fully acknowledged his past immature behavior. He was "young and dumb" while serving in the Navy, having enlisted right after graduating from high school, and for a period after his separation in 2017. He has assumed adult responsibilities of supporting a family, and he performs his job seriously and successfully. I am convinced that Applicant will responsibly address his unpaid debt(s) pursuant to the payment plans he has entered into, and resolve any other debts that remain outstanding. He has strong support from his mother, who knows how to administer "tough love" and has done so with her son to make sure he resolves his finances. Overall, the record evidence leaves me without questions or doubts as to Applicant's 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:	FOR APPLICANT
Subparagraphs 1.a through 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is 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 granted.

JOHN BAYARD GLENDON
Administrative Judge