



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



In the matter of:)	
)	
)	ISCR Case No. 22-00928
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: Pro se

March 1, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 21, 2020, Applicant submitted a security clearance application (e-QIP). On May 20, 2022, 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 June 28, 2022, and requested a hearing before an administrative judge. The case was assigned to me on August 16, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on August 19, 2022, and the hearing was convened as scheduled on October 11, 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 November 8, 2022, to allow Applicant the opportunity to submit some supporting documentation. Applicant submitted eight exhibits, which were admitted into evidence without objection, and marked as Applicant's Post-Hearing Exhibits E, F, G, J, K, L, O, P, and Q. These exhibits were identified by Applicant to correspond to specific allegations in the SOR. DOHA received the final transcript of the hearing (Tr.) on October 24, 2022.

Findings of Fact

Applicant is 36 years old. He is unmarried and has two sons, ages 9 and 16 years of age. He has some college education. He is applying for the position of Aircraft Painter 3. 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 seventeen separate creditors totaling \$79,855, which consists of delinquent collection and charged-off accounts. In his answer, Applicant admits all of the allegations, except 1.j., 1.k., 1.l., 1.o., and 1.q., which he contends he has paid off, settled, or made payments on. (Applicant's Answer to SOR.) Credit reports of the Applicant dated March 30, 2020; April 25, 2020; and August 8, 2022, confirm this indebtedness. (Government Exhibits 3, 4 and 5.)

Applicant explained that he fell behind on paying his bills due to his lack of knowledge on how to properly handle his finances with limited resources. He admits that he has been negligent. He was raised in a poverty-stricken area where the median household income is \$22,000 annually. Applicant has been raising his two children and taking care of his grandmother. (Tr. pp. 28-29, and 69.)

Applicant began working for a defense contractor located in State A in June 2020. His goal was to transfer to their facility in State B to be closer to his children who live there. Apparently at some point he transferred to work at the facility in State B. Once there, he did not find the workplace welcoming. He claims that he was the victim of constant discriminatory, derogatory and racist remarks that have caused him mental distress. He was the only African American in the office of about 80 employees. He stated that after a period of trying to work in the toxic environment, he could no longer tolerate the abusive working conditions. He has been on Family Medical Leave from his job since May 24, 2022. He stated that he is supporting himself and living on what is left in his 401(k). He explained that he is seeing a psychiatrist for his mental condition.

He has moved out of State B and back to State A, and has applied for a job with another defense contractor who is currently sponsoring him for a security clearance. (Tr. pp. 29-40.)

Applicant stated that he has filed for social security disability insurance benefits and short-term disability. He recently learned that he will receive back pay, and he plans to use the majority of his money to pay his delinquent debt. Applicant testified that he is currently about \$10,000 behind on his rent in State A. He is not being evicted because of the COVID 19 protections that are in place. (Tr. p. 66.)

The following delinquent debt set forth in the SOR are of security concern:

1.a. A delinquent debt owed to a creditor was placed for collection in the amount of \$24,295. This debt is for a vehicle that was totaled in an accident. Applicant's car was hit in the back, and his car hit a vehicle in front of his. Applicant's insurance had lapsed, and did not cover the cost of his vehicle. He states that he is currently working with the creditor to set up a payment plan. The debt remains owing. (Tr. p. 43.)

1.b. A delinquent debt owed to a creditor was placed for collection in the amount of \$6,139. Applicant was a tenant who completed his lease, and began living month to month without paying rent for a month and a half. This was during COVID 19. Applicant was temporary laid off from work at the time. He states that he is currently working with the creditor to set up a payment plan. The debt remains owing. (Tr. p. 46.)

1.c. A delinquent debt owed to an energy company was placed for collection in the amount of \$1,508. Applicant made one payment of \$50 at the beginning of COVID 19, and then stopped due to financial hardship. He is currently working with the creditor to set up a payment plan. The debt remains owing. (Tr. p. 48.)

1.d. A delinquent debt owed to a car rental company was placed for collection in the amount of \$1,472. Applicant explained that he rented a vehicle, and he had it three days longer than he had rented it, and they came to pick it up. Applicant stated that he needed it to take his children to school. Applicant contends that the account has been closed, and he does not know who to contact about setting up payment arrangements. The debt still shows outstanding on his most recent credit report. The debt remains owing. (Tr. p. 50.)

1.e. A delinquent debt owed to a creditor for a credit card was charged-off in the amount of \$984. The debt occurred during COVID 19. Applicant testified that he was working with the creditor to set up payment arrangements. On November 9, 2022, Applicant settled the debt for \$590.70. (Tr. p. 51, and Applicant's Post-Hearing Exhibit E.) The debt has been resolved.

1.f. A delinquent debt owed to a creditor for an internet service was placed for collection in the amount of \$335. Applicant states that he moved out of his home and did not turn off his service. He is currently in contact with the collection agency to set up

a payment arrangement. On November 8, 2022, Applicant settled the debt for \$149.38. (Tr. p. 52, and Applicant's Post-Hearing Exhibit F.) The debt has been resolved.

1.g. A delinquent debt owed to a creditor was placed for collection in the amount of \$23,627. Applicant stated that he came into a settlement and purchased the corvette for \$80,000. This Corvette was totaled when Applicant hydroplaned off the road and into a tree. Applicant's insurance lapsed on the day of the accident, and it did not cover the vehicle. The vehicle was sold and charged off. Applicant states that he attempted to make payment arrangements but was unsuccessful. (Tr. p. 53-54.) A copy of his credit report shows that the debt was paid in full for less than the full balance. (Applicant's Post-Hearing Exhibit G.) The debt has been resolved.

1.h. A delinquent debt owed to the Department of Education was placed for collection in the amount of \$9,835. Applicant took out this loan in 2012. He states that he has made payments off and on. The payments have been suspended due to COVID 19. He will resume payments of \$50 monthly when the suspension is lifted. (Tr. pp. 56-57.) The debt remains owing.

1.i. A delinquent debt owed to the Department of Education was placed for collection in the amount of \$4,077. Applicant took out this loan in 2012. He states that he has made payments off and on. The payments have been suspended due to COVID 19. He will resume payments of \$50 monthly when the suspension is lifted. (Tr. pp. 56-57.) The debt remains owing.

1.j. A delinquent debt owed to a creditor for a telephone bill was placed for collection in the amount of \$3,338. Applicant states that the debt was paid off and settled in May or June 2020, in the amount of \$1,001. (Tr. p. 57, and Applicant's Post-Hearing Exhibit J.) The debt has been resolved.

1.k. A delinquent debt owed to a creditor for a cell phone was placed for collection in the amount of \$1,496. Applicant states that the debt was paid off and settled for \$754.50. (Tr. p. 59, and Applicant's Post-Hearing Exhibit K.) The debt has been resolved.

1.l. A delinquent debt owed to a creditor was placed for collection in the amount of \$1,049. This was for what he owed to the management company when he left his apartment. Applicant states that the debt was paid off and settled in the amount of \$1,045 to the creditor's law firm. (Tr. p. 59, and Applicant's Post-Hearing Exhibit L.) The debt has been resolved.

1.m. A delinquent debt owed to a creditor for jewelry was placed for collection in the amount of \$533. Applicant states that he made a \$50 payment at the beginning of COVID 19, and then stopped. Applicant believes this debt may be a duplicate of the debt listed in 1.o. (Tr. pp. 59-60.) Assuming it is, the debt has been resolved.

1.n. A delinquent debt owed to a creditor was placed for collection in the amount of \$439. Applicant states that he made a \$50 payment at the beginning of COVID 19 and then stopped due to financial hardship. (Tr. p. 61.) The debt remains owing.

1.o. A delinquent debt owed to a creditor was placed for collection in the amount of \$397. Applicant denies the debt. Applicant has settled the debt in the amount of \$218.13. (Applicant's Post-Hearing Exhibit O.) The debt has been resolved.

1.p. A delinquent debt owed to a creditor for a cell phone was placed for collection in the amount of \$276. Applicant states that he made a \$25 payment toward the debt according to his payment arrangement. (Tr. p. 62.) On November 9, 2022, Applicant settled the debt in the amount of \$75.47. (Applicant's Post-Hearing Exhibit P.) The debt has been resolved.

1.q. A delinquent medical debt owed to a creditor was placed for collection in the amount of \$55. Applicant denies the debt. (Tr. p. 63.) He states that the debt has been paid off in the amount of \$59.18. (Applicant's Post-Hearing Exhibit Q.) The debt has been resolved.

Applicant explained that he had a relocation package and a bonus when he moved from State B to State A. He used that money to pay off some of his delinquent debts. (Tr. p. 55.)

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. Two are potentially applicable in this case:

- (a) Inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred excessive delinquent debt for a variety of reasons. At times, he has lived beyond his means and spent money on extravagant things. Purchasing a Corvette for \$80,000 when he was financially strapped was not a good decision. On other occasions, he may not have been earning enough money to cover his bills. As a result, he incurred debt that he has not been able to pay. In addition, he states that he has been the victim of discrimination that may have impacted his ability to pay his bills. And finally, it is not clear whether he has ignored his debt for many years, and focused on other priorities in his life. In any event, his actions or inactions both demonstrated a history of not addressing his responsibility and an inability 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 of the dispute or provides evidence of actions to resolve the issue.

Applicant has made progress toward resolving his delinquent debts and he is commended for these efforts. He has settled a number of his debts and resolved about \$31,000. However, he remains delinquently indebted and currently owes in excess of \$48,000, that he cannot show how he can pay. Not to mention his delinquent back rent of now \$10,000 that will be due when his COVID restriction are lifted. Under the circumstances, Applicant has not demonstrated that he can live within his means and comfortably pay his delinquent debts. Applicant does not meet the eligibility requirements for access to classified information. None of the mitigating conditions apply. 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
Subparagraphs 1.a., 1.b., 1.c, 1.d., 1h., 1.i., and 1.n	Against Applicant
Subparagraphs 1.e., 1.f., 1.g., 1.j., 1.k., 1.l., 1.m., 1.o., 1.p., and 1.q.	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