



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



In the matter of:)
)
) ISCR Case No. 22-01238
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq., Attorney At Law, The Edmunds Law Firm

February 27, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 14, 2021, Applicant submitted a security clearance application (e-QIP). On July 15, 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, *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 August 25, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on November 2, 2022, and the hearing was convened as scheduled on December 12, 2022. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7,

which were admitted without objection. Applicant offered sixteen exhibits, referred to as Applicant's Exhibits A through P, which were admitted without objection. Applicant testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on December 27, 2022.

Findings of Fact

Applicant is 31 years old. He is married a second time with no children. He has a high school diploma, and military training. He holds the position of Aviation Mechanic II with a defense contractor. 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 two separate creditors for delinquent accounts totaling approximately \$38,000, which were charged off by the creditors. Also, alleged is while in the military, Applicant was investigated for violations of the UCMJ Article 21, Larceny: Military Property More Than \$500, and Article 132, Fraud: Making False Claim. In his answer, Applicant admits allegation 1.a., and denies allegations 1.b., and 1.c. Credit reports of the Applicant dated October 19, 2021; April 27, 2022; and September 13, 2022, confirm this indebtedness. (Government Exhibits 5, 6 and 7.)

Applicant served in the U.S. Marine Corps for nine years from November 2011 to November 2020. During his military career, he held a security clearance without incident, and was deployed on three separate occasions on overseas tours and multiple small mission attachments. He received a number of awards and commendations including Good Conduct Medals, Meritorious Mast's Certificates, and several Naval Aviation Marine Corps Medals. He received an honorable discharge. (Applicant's Exhibits G and H.)

1.a. In 2013, Applicant was in the military. He married a woman and was receiving basic allowance for housing (BAH), which provides money to cover service members housing and related costs in the civilian market when government quarters are not available. The BAH he received was to support himself and his dependent. In 2015, his wife joined the Air Force and was commissioned as an officer. Applicant continued to receive BAH, which he was not entitled to receive. The rule is that a military member married to another military member who has no dependents other than the spouse is entitled to partial BAH, meaning one member receives BAH, not both. Applicant claims that he unknowingly received more BAH than he was entitled to receive. In 2017, Applicant and his wife divorced. Applicant stopped the BAH, and Applicant deployed to

Okinawa. An audit was conducted when Applicant was deployed to Okinawa, IPAC. Apparently for at least two years, Applicant received BAH which he was not entitled to amounting to at least \$20,000 in extra pay. In November 2017, Applicant was investigated for violations of UCMJ Article 121-Larceny, Military Property More Than \$500, and Article 132-Fraud, Make False Claim. Applicant stated that he went before a military board, comprised of the Commanding Officer and members from the Squadron. He explained that he unknowingly received more BAH than he was allowed. His commanding officer dismissed the charges against him and nothing more came of the investigation. Applicant did not receive non-judicial punishment or a court martial. In 2020, Applicant separated from the military with an honorable discharge. He is entitled to re-enlist if he so chooses. For some unknown reason, Applicant was not required to pay the BAH money back to the military. There was no waiver filed, no garnishment action implemented, nor was his salary reduced due to this fraud.

The following delinquent debts were of security concern:

1.b. Applicant was indebted to a creditor on an account that was charged off in the approximate amount of \$32,542. He explained that in 2015/2016, he took out a personal loan that he used on his vehicles, and to loan money to a friend. After a while, Applicant was unable to continue to afford to make the monthly payments on the personal loan. He was not contacted by the creditor for payment. When his finances improved, he contacted the creditor and obtained a settlement offer that he agreed to. Applicant has now successfully settled the account for less than was owed in the amount of \$16,272. (Applicant's Exhibits B, E, L, O, and P, and Tr. p. 36.)

1.c. Applicant was indebted to a creditor on an account that was charged off in the amount of \$5,432. This was a credit card that Applicant opened. For a while he was using it and paying it off. He got to a point where he could no longer afford to pay his bills and the debt went into collections. He was not contacted by the creditor for payment. When his finances improved, Applicant contacted the creditor and resolved the debt in full. (Applicant's Exhibits C, K, L, and M.)

Applicant testified that he has also taken a credit counseling class to learn how to properly budget his finances. He states that he is more financially mature and now understands his mistakes in the past and how to prevent them from happening in the future. He also knows how to handle his credit and his debts without difficulty. He now strives to follow his monthly budget, and puts money away in savings. (Tr. p. 39.) Applicant's most recent financial statement shows that his current debts are paid off, and he is on track and financially sound. (Applicant's Exhibit N.)

A letter of recommendation from Applicant's Site Supervisor, who was also in the Marine Corps with the Applicant working the same platforms, indicates that Applicant has many favorable characteristics. He has a positive work ethic, attention to detail, strict adherence to rule and regulations, and strives to build a trustworthy relationship amongst his team and customers. Applicant is described as a great mentor, friend, and work colleague. He is recommended for a security clearance. (Applicant's Exhibit F.)

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant incurred delinquent debt that he could not afford to pay. He also received military financial benefits that he was not entitled to receive. His actions or inactions both demonstrated a history of not addressing his debt and an inability to do so. 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, or a death, divorce, or separation), 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 to resolve the issue.

Applicant has resolved his delinquent debts. He understands the importance of being responsible and trustworthy in every aspect of his life, including his finances. He has paid off his delinquent debts, and is current with all of his regular monthly expenses. In regards to his alleged violations of the UCMJ Article 121-Larceny, and Article 132-Fraud, he went before a military board for these offenses, he explained that he unknowingly received more BAH than was allowed, and the charges against him were dismissed. Furthermore, following this, he received an honorable discharge from the military, and the ability to re-enlist if he so chose.

Applicant understands the great responsibilities attached with holding a security clearance, and the many sacrifices one must make to hold the privilege. He is now following a financial budget and has modified his spending habits to be consistently financially responsible. He also understands that he must follow all rules and regulations applicable to him. Applicant has demonstrated responsibility and good judgment, reliability, and trustworthiness. Mitigating conditions 20(a), 20(b), and 20(d) are applicable.

There is sufficient evidence in the record to show that Applicant's delinquent debts have been resolved. Overall, Applicant has shown great progress towards resolving his debts. He must continue to be financially responsible going forward. There is sufficient 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. Applicant's character and work ethic are impressive. He must continue to show financial responsibility and abide by all rules, regulations, and Federal and state laws in the future, or he will be in jeopardy of losing his security clearance and access to classified information.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a. through 1.c	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge