



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



In the matter of:)	
)	
)	ISCR Case No. 19-01154
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Kelly M. Folks, Esquire, Department Counsel

For Applicant:
Pro se

March 23, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 16, 2018. 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 8, 2021, and requested his case be decided on the written record in lieu of a hearing. In his Answer Applicant admitted all of the 12 allegations in the SOR, and he provided several statements regarding mitigating circumstances. On August 10, 2022, Department Counsel submitted the Government's written case. A complete copy of the file of relevant material (FORM), including evidentiary Items 1 to 8, was provided to Applicant, who received the FORM on October 12, 2022.

Applicant was given 30 days from receipt of the FORM to raise objections and submit documents in refutation, extenuation, or mitigation. Applicant did not reply to the FORM, raise any objections, or submit any documentation. The case was assigned to me on January 19, 2023.

Department Counsel advised Applicant in bold print in the FORM that if he did not respond to the FORM and raise any objections to the admissibility of the Government's evidence, and specifically the summary of his security interview with a Government investigator (Item 5), he may be deemed to have waived any objections to the Government's evidence. In the absence of any objections by Applicant, Items 1 through 8 are admitted into evidence. Based upon a review of the pleadings and the Government's evidence, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 52 years old, married, and has four adult children. He has been employed as an architect by a DoD contractor since December 2017. The record evidence contains no information about Applicant's education. Applicant has held a security clearance since 1993. On February 10, 2021, the DoD Continuous Evaluation Program reported (CE Report) that a January 7, 2021 credit report indicated that Applicant had two delinquent accounts totaling about \$20,000. Shortly thereafter the CAF issued the SOR. Applicant seeks to retain his eligibility and a security clearance in connection with his employment. (Item 1; Item 3 at Sections 2, 13A, 15, 17, 18, 25; and Item 4.)

Guideline F, Financial Considerations

The Government alleged in this paragraph of the SOR that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR lists 12 debts that are charged-off or in collection. The total amount of the debts is approximately \$71,000. The CE Report did not capture the full extent of Applicant's debts. The existence and amounts of these debts is supported by Applicant's admissions in his Answer and by credit reports in the record dated January 7, 2021; March 25, 2019; and May 23, 2018. The debts are also confirmed by statements reportedly made by Applicant

during a security interview conducted by an investigator from the Office of Personnel Management (OPM) on August 22, 2018. (Items 5, 6, 7, and 8.)

In Applicant's Answer, he advised that his financial delinquencies arose due to his son's addiction to opioids and related multiple rehabilitation treatments and travel expenses. He also wrote that his wife and daughter have had significant medical issues that caused him to incur unexpected medical expenses. His medical insurance covers much, but not all, of those expenses. In addition, he explained that the COVID-19 pandemic prevented his wife from working because she has a compromised immune system due to the medications she takes for her medical condition. This has resulted in a reduced family income available to pay their expenses. (Answer at 2.)

In the e-QIP and during his security interview, Applicant provided additional details of unexpected expenses he has incurred in recent years and other mitigating conditions. His son with the addiction caused Applicant to pay restitution for money stolen by his son. The son also had a DUI arrest, which caused Applicant to incur legal fees and court costs. Applicant also noted that he had unforeseen auto repairs and higher interest rates and late fees due to late payments on his bills. Applicant also noted that he was laid off in December 2017 and, even though he immediately obtained a new position with his current employer and clearance sponsor, he took a pay cut to remain employed. (Item 3 at Section 26; Item 5 at 4.)

Applicant provided no information or documentation regarding steps he has taken to resolve any of the 12 SOR debts. The details of the 12 SOR debts are as follows:

1.a. Credit account charged off in the approximate amount of \$1,370. This debt is not resolved. (Item 3 at 42-43; Item 4; Item 5 at 2; Item 6 at 1; Item, 7 at 2; and Item 8 at 9.)

1.b. Auto loan account charged off in the approximate amount of \$31,121. Applicant opened this account in 2015 to purchase a vehicle. This debt is not resolved. (Item 3 at 44-45; Item 5 at 3; Item 6 at 1; Item 7 at 7; and Item 8 at 3.)

1.c. Home mortgage loan account past due in the approximate amount of \$1,423. Applicant paid his past-due mortgage debt and his mortgage is current. This debt is resolved. (Item 3 at 44; Item 5 at 3; Item 6 at 2; Item 7 at 1; and Item 8 at 3.)

1.d. Consumer account in collection in the approximate amount of \$18,743. This debt is not resolved. (Item 6 at 3.)

1.e. Credit-card account charged off in the approximate amount of \$2,252. This debt is not resolved. (Item 3 at 37-38; Item 5 at 2; Item 7 at 2; and Item 8 at 9.)

1.f. Retail store account charged off in the approximate amount of \$777. This debt is not resolved. (Item 3 at 39-40; Item 7 at 2; and Item 8 at 11.)

1.g. Medical account in collection in the approximate amount of \$401. This is not resolved. (Item 7 at 2.)

1.h. Retail-store account charged off in the approximate amount of \$1,114. This debt is not resolved. (Item 3 at 34-35; GE 5 at 1; and Item 8 at 9.)

1.i. Credit-card account in collection in the approximate amount of \$434. This debt is not resolved. (Item 5 at 3; and Item 8 at 10.)

1.j. Online retail account charged off in the approximate amount of \$1,164. This debt is not resolved. (Item 3 at 40-41; Item 5 at 2; and Item 8 at 10.)

1.k. Credit-card account charged off in the approximate amount of \$3,867. This debt is not resolved. (Item 3 at 36-37; Item 5 at 1-2; and Item 8 at 11.)

1.l. Credit-card account charged off in the approximate amount of \$8,184. This debt is not resolved. (Item 3 at 35-36; Item 5 at 1; and Item 8 at 12.)

Applicant submitted no documentation or additional information concerning his debts, current income, retirement savings, or his family budget. Also, he provided no information detailing his plans for resolving his past-due indebtedness or demonstrating other indicia of trustworthiness. According to the available record information, Applicant purchased his residence in January 2008 and, as of the date of the e-QIP, April 16, 2018, he continued to reside in that home. He provided no information regarding his equity in the home or any plans to use that equity to resolve his debts. (Item 3 at Section 11.)

In his security interview, he made vague statements about working to resolve his delinquent debts. He offered no specific steps he is taking to reduce his expenses or otherwise enable him to repay his debts. He expressed no intention to work at a second, parttime job to repay his debts, or to seek a court-ordered, five-year repayment plan for all or part of his debts under a Chapter 13 bankruptcy reorganization plan. (Item 5 at 4.)

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

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; and
- (c) a history of not meeting financial obligations.

Applicant admitted that he incurred about \$71,000 in past-due accounts over the last several years. The 12 delinquent debts set forth in the SOR establish the foregoing disqualifying conditions and shift the burden to Applicant to mitigate the Government's security concerns.

The guideline includes three 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts arose under extraordinary circumstances that are unlikely to recur. The fact that he experienced the circumstances does not cast doubt on his reliability and trustworthiness. However, the fact that he has not addressed his delinquent debts over the past several years, even after his receipt of the SOR in March 2021, casts serious doubts about his judgment. AG ¶ 20(a) is only partially established.

Applicant's dire financial position is the result of conditions that were largely beyond his control. However, he has offered no evidence to support a conclusion that he has acted responsibly under the circumstances. AG ¶ 20(b) is only partially established.

AG ¶ 20(d) is not established. Applicant has not initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts. He has not presented a reasonable plan to resolve his debts nor has he sought financial counseling to develop such a plan. Paragraph 1 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential 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. Applicant has not mitigated the security concerns raised by his past-due indebtedness. Also, he has not provided any whole-person evidence regarding his trustworthiness or reliability. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's suitability for national security eligibility and a security clearance at the present time.

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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d through 1.l:	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