



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



In the matter of:)	
)	
)	ISCR Case No. 22-00334
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

March 27, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 14, 2020, Applicant submitted a security clearance application (e-QIP). On April 1, 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 May 25, 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 18, 2022, and the hearing was convened as scheduled on October 6, 2022. The Government

offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. Applicant testified on his own behalf. The record remained open following the hearing, until close of business on October 20, 2022, to allow the Applicant to submit additional supporting documentation. Applicant submitted four additional documents, referred to as Applicant's Post-Hearing Exhibits A through D, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 17, 2022.

Findings of Fact

Applicant is 34 years old. He resides with his girlfriend, and they have three children. He has a high school diploma. He holds the position of Senior Organic Coating Technician. 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 identified five delinquent debts totaling approximately \$27,500. Applicant admitted each of the allegations set forth under this guideline. Credit reports of the Applicant dated April 14, 2020; July 8, 2021; January 13, 2022; and August 5, 2022, confirm that at one time he was indebted to each of the creditors listed in the SOR. (Government Exhibits 3, 4, 5 and 6.)

Applicant has never applied for a security clearance before. He began working for his current employer in July 2015. A security clearance was not required for the position that he was originally hired for. As time passed, his good job performance has offered him more opportunities if he possesses a security clearance.

Applicant's history of financial difficulties were caused by his impulsive and irresponsible purchases and not living within a budget. Applicant explained that he provides all financial support for his three children and his girlfriend who is house wife and stay-at-home mother. He earns \$25 hourly or about \$1,000 weekly. He now realizes that in order to be eligible for a security clearance he must live within his means, follow a budget, and make responsible purchases.

Applicant recently hired a Credit Repair Agency to assist him in negotiating settlements for his delinquent debts, and to help in getting his debts paid off. His fee for their services is \$2,040. He put an initial deposit of \$200 towards this fee and pays them \$150.33 on the tenth of every month for twelve consecutive months.

The following delinquent debts listed in the SOR are of security concern:

1.a. Applicant is indebted to a creditor in the amount of \$17,738 for an account that was charged off. In 2016, he purchased a new 2016 Electric Kia for \$30, 818, that he was financing. Four months after purchasing the car, he realized that he could not afford to continue making the \$500 monthly payments, and he did not have access to a charging station. Applicant called the creditor and asked them to pick up the car. They told him to stop making payments on the account first. He stopped making payments, and the car was eventually repossessed and sold at auction. Applicant owes the deficiency amount left on the loan after the sale. The debt remains owing. (Tr. p. 35, and Applicant's Exhibit A.)

1.b. Applicant was indebted to a creditor in the amount of \$950 for an account that was charged off. He explained that he went to a dentist and applied for their credit card. This was for the dental bill. Applicant paid the debt off in September 2022. (Tr. p. 39 and Applicant's Exhibit B.)

1.c. Applicant was indebted to a creditor in the amount of \$383 for an account that was placed for collection. This is car insurance that Applicant purchased. He cancelled it because he found a cheaper insurance. Applicant paid off the debt on May 20, 2022. (Tr. p. 41, Applicant's Exhibit C, and Government Exhibit 6.)

1.d. Applicant was indebted to a creditor in the amount of \$172 for an account that was placed for collection. Applicant does not remember what the debt was for but does know that he settled the debt for \$126.16 on May 20, 2022. (Tr, pp. 41-42, and Applicant's Exhibit C.)

1.e. Applicant is indebted to a creditor in the amount of \$8,246 for the purchase of a used Nissan Ultima that he purchased in March 2017. The account was placed for collection. Applicant explained that he had no insurance on the car when he was in a car accident which totaled the car in May 2017. Following the car accident, the tow truck dropped the car off at his apartment. It was being financed through General Motors. The car was sold at auction for scraps. Applicant owed the deficiency amount of \$8,000. Applicant confirms that the creditor plans to send him a Form 1099 C. (Tr. pp. 42-46.) An excerpt from Applicant's Experian credit report indicates that it was "legally paid in full for less than the full balance". (Applicant's Exhibit D.)

A letter of recommendation from Applicant's supervisor on 2nd shift indicates that Applicant has high standards. He displays excellent work ethics, and always does what is right for his team and the company. He is a delight to work with and is extremely trustworthy. (Applicant's Post-Hearing Exhibit C.)

Applicant's performance appraisals for the periods from 2020 and 2022 reflect ratings of "effective" and "strong" in every category. (Applicant's Post-Hearing Exhibit B.)

Applicant has received a number of awards from his company for good job performance. (Applicant's Post-Hearing Exhibit D.)

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

Applicant has a history of financial difficulties due to his irresponsibility. His actions or inactions both demonstrate a history of not addressing his debt and/or 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 incurred delinquent debt that he could not afford to pay. It was only after receiving the SOR that he made some effort to resolve his debts. His financial irresponsibility and inaction casts doubt on his current reliability, trustworthiness, or good judgment. Applicant now realizes his mistakes of the past and understands that he must be financially responsible and live within his means if he is to obtain a security clearance in the future. Applicant has recently hired a Credit Repair Agency to assist him with his finances. It would also be beneficial for Applicant to take some finance classes to improve his ability to control his spending and to make rational and reasonable decisions. At this time, he has not sufficiently resolved his delinquent debt, nor has he demonstrated a systematic method of payment. He must work diligently to improve his financial status and to achieve a security clearance. At this time, Applicant needs more time to show the Government that he will properly resolve his financial delinquencies with regular systematic payments and consistency. None of the mitigating conditions are applicable.

There is insufficient evidence in the record to show that Applicant has made a good faith effort to resolve his debts. Overall, Applicant has a good employment record, is well liked on the job, and has potential in the future if he changes his ways. He must show progress towards properly managing his finances. This means paying his bills on time and living within his means. Applicant still owes a significant amount of money to one of his creditors, and he has yet begun to resolve the debt. 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. In the event that Applicant follows through with his commitment to show financial responsibility, sometime in the future he may be found to be sufficiently reliable to properly protect and access 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 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., and 1.e.	Against Applicant
Subparagraphs 1.b., 1.c., and 1.d.	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