



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



In the matter of:)	
)	
)	ISCR Case No. 22-00601
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

March 29, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on February 23, 2021. On April 1, 2022, the Department of Defense 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 the DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on July 18, 2022 and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 11, 2023. DOHA assigned the case to me on January 31, 2023 and issued a Notice of Video Teleconference Hearing on February 16, 2023. The case was heard as scheduled on March 8, 2023.

The Government offered Government Exhibits (GE) 1 through 5, which I admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on March 15, 2023. (Tr. at 16-20.)

Findings of Fact

Applicant is 48 years old, married, and has four children and three stepchildren. Four of the children live with Applicant and their mother. Applicant served in the U.S. Navy for 20 years and retired honorably in January 2015 as a member of the Submarine Force as an Auxiliaryman (E-6). He held a security clearance while in the Navy. Since 2018, he has worked for a U.S. Government contractor as a quality assurance specialist. He has applied to continue his security clearance in relation to his employment. (Tr. at 24; GE 1 at Section 2, 15, 17, 18, 25.)

Guideline F, Financial Considerations

The Government alleged in this paragraph that Applicant is ineligible for a security 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 identified five past-due or charged-off debts owed by Applicant totaling about \$40,000 (SOR ¶¶ 1.a through 1.e). In his Answer, Applicant admitted all of the SOR allegations and commented that he has paid one of the debts. He also argued that three of the debts will be removed from his credit report in 2023 or 2024 and a fourth is “closed.” The existence and amounts of all five debts is supported by Applicant’s admissions in the Answer and by credit reports in the record, dated January 11, 2023; October 13, 2021; and March 12, 2021. (Answer; GE 2, GE 3, GE 4.)

Applicant first started to experience financial problems in about 2015 and the year or so after his Navy retirement. He was unemployed for a period and in November 2015, he had a bad motorcycle accident that kept him from working for a period. He then had more periods of unemployment and underemployment. He defaulted on all of the SOR debts during the first two years following his retirement. (Tr. at 30-31, 49-53; GE 1 at Section 13A, 26.)

Applicant testified that he and his wife presently have monthly take-home pay of about \$9,700. In addition, he has monthly retirement benefits from the Navy of about \$1,500 and VA disability benefits of about \$160. Their total net monthly income is over

\$11,000. Based upon his off-the-cuff calculations of his monthly expenses, he believes he has on average about \$2,000 left over at the end of every month. He presently has about \$1,000 in savings. At one time, he had about \$8,000 in savings, but it has been reduced recently due to some emergency expenses and because he loaned money to a family member who lost his job. In light of his savings history, Applicant's estimated net monthly remainder appears to be based upon an incomplete listing of his monthly expenses. (Tr. at 33-46, 59.)

Applicant never contributed to a Thrift Savings Plan account when he was a servicemember. He does not contribute to his current employer's retirement account. (Tr. at 59-60.)

The current status of the debts listed in the SOR is as follows:

1.a. Credit Union Debt Charged-Off in the Amount of \$14,638. The creditor that charged off this credit-card account is the same creditor that charged off the debts listed in SOR ¶¶ 1.b and 1.c. He was able to keep these accounts current until he retired, but without stable new employment, his savings alone were not enough to pay his debts. The creditor has transferred these three debts to a collection agency. In the week or so prior to the hearing, Applicant tried to contact the agency to discuss settlement options, but he has not been successful in reaching anyone. He wants to slowly "chip away" at these three debts when he is able to do so. This debt is not resolved. (Tr. at 54-60; GE 3 at 2; GE 4 at 2.)

1.b. Credit Union Debt Charged-Off in the Amount of \$9,173. Applicant took out this loan to purchase a motorcycle. The motorcycle is the same one that was involved in an accident in November 2015. It was a total loss. See discussion in SOR ¶ 1.a, above. This debt is not resolved. (Tr. at 60-62; GE 2 at 4; GE 3 at 2; GE 4 at 3.)

1.c. Credit Union Debt Charged-Off in the Amount of \$5,106. This debt is for an auto loan that Applicant could not afford after his retirement. The car was repossessed. See discussion in SOR ¶ 1.a, above. This debt is not resolved. (Tr. at 60-61; GE 2 at 4; GE 3 at 2; GE 4 at 3.)

1.d. Personal Loan Account Charged-Off in the Amount of \$10,792. Applicant opened this account when he was on active duty in the Navy. He needed the credit to pay for travel expenses to see his mother, who had suffered a heart attack. He subsequently retired and had little income to repay this loan. In November 2015, after his retirement, he also had medical expenses due to a motorcycle accident. He was unable to work for an extended period. He also incurred significant medical bills. This debt is not resolved. (Tr. at 49- 52; GE 3 at 3; GE 4 at 3.)

1.e. Cellular Phone Account in Collection in the Amount of \$794. Applicant testified that he paid this account in July 2021, when his finances finally became stable enough so that he could afford to pay this collection account. He provided no

documentation to corroborate his claim that the debt is paid. The debt only appears on the Government's earliest credit report, dated March 12, 2021 (GE 4). That credit report reflects the debt has been placed for collection. Based upon the totality of the record, I find that this debt is resolved. (Tr. at 46-48; GE 4 at 3.)

Mitigation

According to the credit reports in the record, Applicant has paid and closed two delinquent accounts with debts totaling \$2,000, (GE 3 at 3; GE 4 at 4-5). Those debts were not alleged in the SOR. He has also paid the debt listed in SOR ¶ 1.e. His debt-resolution strategy is to pay the smaller debts first, including the debt alleged at SOR 1.e and the two debts that were not listed in the SOR, and then as his finances permit, start paying down the larger debts. He testified that the experience of discussing all of his debts in a hearing was a "sobering" experience. He said that he wants to "chip away" at his debts, but he acknowledged that it is difficult to do that with a large family creating a lot of competing financial priorities. Applicant's finances today are much more stable than they were during the 2015-to-2017 period. He has not incurred any delinquent debts since he defaulted on the last of the five SOR debts in 2015 or 2016. (Tr.at 53-64.)

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 personal 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 two 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 owed approximately \$40,000 for five past-due debts, as of the date the SOR was issued. These facts render the foregoing disqualifying conditions applicable and shift the burden to Applicant to mitigate those concerns. Guideline F includes the following four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial delinquencies:

(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 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; and

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

AG ¶ 20(a) and 20(b) are only partially established. Applicant's debts arose following his retirement from the Navy when he was unemployed for a period and then was unable to work due to injuries he sustained in a motorcycle accident. Applicant's initial difficulty finding employment after his retirement is a circumstance largely beyond his control, as was his loss of income after his accident. Since August 2018, he and his wife have obtained financial stability and are now earning significant net monthly incomes. It cannot be concluded, however, that he has acted responsibly under the circumstances in addressing his past delinquencies. Several years have passed since 2018. It was only a week before the hearing that Applicant sought to contact the collection agency holding three of the SOR debts. Applicant's behavior casts doubts of his current reliability, trustworthiness, and good judgment.

AG ¶ 20(c) is not established. Applicant has not sought or received any financial counseling. He has a theoretical concept for repaying his debts, starting with the smallest debts and working up to the largest. In about July 2021, he paid one SOR debt before the SOR was even issued. At some point before the SOR was issued in April 2022, he paid two other small debts. Since those payments some time ago, Applicant has not taken any serious steps to address his four remaining SOR debts. Accordingly, there are no clear indications that the problem is being resolved or is under control.

AG ¶ 20(d) is not established. Applicant has only taken the first of many steps necessary to implement a plan to repay his delinquent debts. Accordingly, he has not initiated and is not adhering to a good-faith effort to repay his overdue creditors.

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 have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Further comments are warranted. I have given substantial weight to Applicant's 20 years of service in the Navy and his honorable retirement. I have also credited his integrity and sincerity with which he responded to the questions asked at the hearing. It is clear that he suffered a big setback in his financial stability after retiring from the Navy and especially after his accident disabled him and he could not work for a substantial period of time. I have also weighed the fact that he has not become further indebted since 2017 and that his current monthly finances are stable, even with his large family to house, feed, and provide care. All of these positive traits, however, are outweighed by the fact that he has not taken any significant steps to address his past delinquent debts starting with seeking the advice of a financial counselor who can help him budget his sizable monthly family income and set aside funds every month so that he can begin to pay down his remaining four debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance at this 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 through 1.d:	Against Applicant
Subparagraph 1.e:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge