



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01618
	)	
Applicant for Security Clearance	)	

**Appearances**

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

May 19, 2023

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On September 19, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on November 15, 2022, and requested a hearing before an administrative judge. The case was assigned to me on February 13, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on March 2, 2023, and the hearing was convened as scheduled on March 14, 2023. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered three exhibits, referred to as Applicant's Exhibits A through C, which were admitted without objection. Applicant

testified on his own behalf. The record remained open until close of business on April 19, 2023, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one exhibit, comprised of ten pages, referred to as Applicant's Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 24, 2023.

### **Findings of Fact**

Applicant is 39 years old. He is married and has a four year old son. He has a tenth grade high school education. However, he has attended trade school from 2007 to 2010, and again in 2014, where he has earned several trade certificates. He holds the position of Tool Maker Machinist for a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry.

The SOR alleges that Applicant has six delinquent debts totaling approximately \$52,907, all of which are consumer accounts. In his Answer, Applicant admits each of the allegations and provides explanations. Credit reports of the Applicant dated February 4, 2022; and December 15, 2022, reflect that each of these debts were at one point owing. (Government Exhibits 3 and 4.)

Prior to 2019, Applicant had a good credit score and payment history. In late 2019, he decided to start his own manufacturing and machinist shop. He used money from his 401(k) and his credit cards to finance this business venture. The business did very well the first year earning about \$161,000. The money he earned, he invested back into the business anticipating even more success. The following year, however, due to COVID and its quarantine requirements, there was a drastic decline in business and Applicant could not keep up with financial responsibilities. In 2021, Applicant was forced to close the business. He then started looking for a job. At this point, however, he had spent most of his savings simply trying to survive. He was forced to neglect some bills and pay others in order to keep his family afloat. His mortgage and his car payment were his top priorities to ensure his family would have a place to live and transportation. Other bills became delinquent. Applicant began working for his current employer in October 2021. Since then, he has been slowly recovering, trying to pay off his delinquent debts. He stated that he started by paying his smaller debts first, which included debts he owed to Lowes, Best Buy, and Home Depot. Applicant's wife is unemployed.

The following delinquent debts set forth in the SOR were of security concern:

1.a., is a delinquent debt owed to a creditor that was charged off in approximate amount of \$26,963. This was a credit card that Applicant used to help finance his business, and to help pay for living expenses after closing his business. (Tr. p. 48.) Applicant has set up a payment agreement with the creditor. The debt will be paid off in regular monthly installments of \$250. Applicant began his first payment of \$250 on March 30, 2023, that will continue monthly until the debt is paid in full. (Applicant's Post-Hearing Exhibit A.)

1.b., is a delinquent debt owed to a creditor that was charged off in the approximate amount of \$8,369. Applicant purchased a water filtration unit for his home. (Tr. pp. 51-52.) A letter from the creditor dated March 24, 2023, indicates that the Applicant has settled the debt in full. The debt is no longer owing. (Applicant's Post-Hearing Exhibit A.)

1.c., is a delinquent debt owed to a bank for an account that was charged off in the approximate amount of \$6,784. Applicant testified that he made a \$3,000 payment toward the debt the week before the hearing. A letter from the creditor dated April 1, 2023, indicates that Applicant made his last payment of \$1,500 on March 10, 2023, and the debt has been settled in full. The debt is no longer owing. (Applicant's Post-Hearing Exhibit A.)

1.d., is a delinquent debt owed to a creditor for a medical account that was charged off in the approximate amount of \$3,426. This was the \$3,000 co-pay required by a hospital for the birth of Applicant's son. (Tr. p. 45-46.) A letter from the creditor dated March 29, 2023, indicates that Applicant settled the account and paid off the account in full in the amount of \$5,128.40, on March 27, 2023. The debt is no longer owing. (Applicant's Post-Hearing Exhibit A.)

1.e., is a delinquent debt owed to a creditor for a medical account that was charged off in the approximate amount of \$1,702. A letter from the creditor dated March 29, 2023, indicates that Applicant settled the account and paid off the account in full in the amount of \$5,128.40, on March 27, 2023. The debt is no longer owing. (Applicant's Post-Hearing Exhibit A.)

1.f., is a delinquent debt owed to a creditor for an account that was charged off in the approximate amount of \$5,663. This was for the lease of a Mazda X-9 that Applicant returned to the dealer because he could no longer afford the monthly payments of \$408. (Tr. p. 57-58.) A letter from the creditor dated March 28, 2023, indicates that debt has been settled. The debt is no longer owing. (Applicant's Post-Hearing Exhibit A.)

Applicant stated that he was able to settle each of his debts by using his savings. After taxes, he brings home about \$1,900 weekly. (Tr. p. 43.)

## **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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 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.

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 security 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 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 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, as follows:

Failure or inability 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 information. An individual who is financially

overextended is at risk of having to engage in illegal acts to generate funds.

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.

Due to the pandemic, which caused the downturn in his business, Applicant became excessively indebted and could not afford to pay his debts. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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.

Circumstances beyond the Applicant's control primarily caused Applicant's financial indebtedness. Since obtaining full-time stable employment in October 2021, he has directed his efforts at resolving his delinquent debt. He has successfully settled five of his six debts and has set up a payment plan with the creditor to resolve the largest and remaining debt. He has already started the regular monthly payments towards resolving this remaining debt and plans to continue making these monthly payments until the debt is resolved. Ideally, Applicant should have contacted these creditors before his security clearance became an issue. However, under the circumstances, Applicant has acted in a reasonable and responsible manner. He has shown good judgment, trustworthiness and reliability. There are clear indications that his financial indebtedness is being resolved and is under control. Applicant has

demonstrated a good-faith effort to resolve his debts, and has demonstrated that future financial problems are unlikely. AG ¶ 20 provides full mitigation. The Financial Considerations concern has been mitigated.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has shown maturity and responsibility. He has resolved each of his delinquent debts. He understands the importance of living within his means and paying his bills in a timely fashion. He also understands the responsibilities involved in possessing a security clearance. Applicant has shown the requisite good judgment, reliability, and trustworthiness required of this privilege.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.e	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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge