



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



In the matter of:)	
)	
)	ISCR Case No. 22-01639
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: *Pro se*

June 9, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On February 2, 2022, Applicant submitted a security clearance application (e-QIP). On October 5, 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 a November 7, 2022, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on February 9, 2023, and the hearing was convened as scheduled on March 13, 2023. The

Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on March 21, 2023.

Findings of Fact

Applicant is 55 years old. He is divorced and has four children, three of whom he has custody. He has a high school diploma. He holds the position of Inspector of Machine Technology. 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 twenty allegations consisting of delinquent debts totaling over \$60,000, which includes credit card debt owed to a number of institutions for consumer debt. Applicant admits each of the allegations with explanations. Credit reports of the Applicant dated May 2, 2020; February 24, 2022; and December 14, 2022, confirm that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 4, 5, and 6.)

Applicant was married from 2015 to 2020. At some point, he and his wife separated, and then divorced. Divorced proceedings which went on for an extended period, followed by a child custody battle. This was costly. His attorney fees and related costs totaled about \$8,000. Applicant used credit cards to pay for living expenses and household items, such as furniture, and appliances. Applicant ultimately obtained custody of his three children. (Tr. p. 20.)

Applicant had stable full-time employment from 2012 to 2018. (Tr. p. 20.) He was unemployed from September 2018 to early January 2019, and July 2019 to September 2019, for a total of about six or seven months. (Tr. pp. 19-20.) He stated that he had to borrow money from his mother to help with his living expenses. He explained that was barely able to keep the expense of the house, the children, and their childcare going. He could not afford to pay his debts, and he stopped making payments on his credit card debt in 2018 or early 2019. He had no expendable money. (Tr. p. 29.) Since 2018 or early 2019, no payments have been made towards the credit card debt listed in the SOR.

Applicant began working for his current employer in June 2020. He understood at the time that his job may require a security clearance. He was hired as a Machinist, and was recently promoted to be an Inspector. Applicant earns about \$94,000 annually.

He has about \$2,500 in his checking account, and nothing in his savings. He has a 401(k) with about \$7,000 and a pension that is not effective until he retires. (Tr. pp. 33 and 34.)

Applicant initially testified that he was in the process of filing Bankruptcy to discharge the debts listed in the SOR. However, he was advised by his Bankruptcy attorney to wait until after the hearing to determine if it is necessary, since all of his delinquent debts will fall off of his credit report in 2025, because they are so old. (Tr. pp. 22 and 34.) This will allow the Applicant to quickly rebuild his credit standing and possibly be able to purchase a house. Since September 2020, when he gained full-time employment, Applicant has not made any payments towards resolving his delinquent debts, nor has he contacted his creditors to set up payment arrangements.

The following delinquent credit card debts are of security concern:

1.a. Applicant is indebted to a creditor in the amount of \$10,460 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.b. Applicant is indebted to a creditor in the amount of \$10,265 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.c. Applicant is indebted to a creditor in the amount of \$6,103 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.d. Applicant is indebted to a creditor in the amount of \$4,250 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.e. Applicant is indebted to a creditor in the amount of \$4,121 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.f. Applicant is indebted to a creditor in the amount of \$3,819 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.g. Applicant is indebted to a creditor in the amount of \$2,955 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.h. Applicant is indebted to a creditor in the amount of \$2,819 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.i. Applicant is indebted to a creditor in the amount of \$2,456 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.j. Applicant is indebted to a creditor in the amount of \$2,333 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.k. Applicant is indebted to a creditor in the amount of \$2,195 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.l. Applicant is indebted to a creditor in the amount of \$1,642 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.m. Applicant is indebted to a creditor in the amount of \$1,620 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.n. Applicant is indebted to a creditor in the amount of \$1,474 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.o. Applicant is indebted to a creditor in the amount of \$1,472 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.p. Applicant is indebted to a creditor in the amount of \$1,177 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.q. Applicant is indebted to a creditor in the amount of \$381 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.r. Applicant is indebted to a creditor in the amount of \$258 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.s. Applicant is indebted to a creditor in the amount of \$217 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

1.t. Applicant is indebted to a creditor in the amount of \$198 for an account that was placed for collection. The debt remains owing. (Tr. p. 29.)

Applicant testified that he also learned that if he contacts the creditor to set up a payment plan, the creditor can then legally come after him for payment through the court system. Since he has had no contact with the creditors for four years, at this point, the Statute of Limitation has run, and the debts are over four years old, Applicant understands that the creditor has no recourse against him for payment. (Tr. p. 25-26.)

Applicant further testified that in 2021, during his security clearance background investigation, the DoD investigator told him that he should file for Bankruptcy because it would look better to the Government to have the debt gone than to have it sitting delinquent on his credit report. Applicant stated that he chose not to follow his suggestion because it would extend his period of bad credit and take longer for him to rebuild it. (Tr. pp. 39 – 40.)

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 excessive financial indebtedness and has not addressed his delinquent debts. His actions or inactions both demonstrated 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 has incurred excessive delinquent debt, admittedly, partially caused by his separation, divorce, child custody battle, and short periods of unemployment. However, despite these unfortunate past events, since September 2019, he has been gainfully employed on a full-time basis, and he has not addressed any of his delinquent debt. Four years have passed and apparently, Applicant plans to wait until 2025 when his delinquent debts fall off his credit report to avoid paying his debts or even addressing them in any manner. This does not demonstrate that he is responsible. Instead, it shows his lack of responsibility. Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. Applicant had not taken the necessary steps to show that he can properly resolve his financial delinquencies. He has avoided contacting the creditors or setting up regular systematic payments. This shows poor judgment and unreliability. None of the mitigating conditions are applicable.

There is no evidence in the record to show that Applicant's delinquent debts have been resolved. Overall, Applicant has made no progress towards resolving his debts. He still owes about \$60,000 to his creditors that he obviously has no intention of paying. 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. Applicant has failed to show financial responsibility and is not 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. through 1.t:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge