



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 22-01888 |
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| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro Se*

June 9, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On October 13, 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 October 31, 2022, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2023. DOHA issued a notice of hearing on February 9, 2023, and the hearing was convened as scheduled on March 13, 2023. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered 40 exhibits, referred to as Applicant’s Exhibits 1 through 40, which were admitted without objection. Applicant also testified on his own behalf. The record

remained open until close of business on March 20, 2023, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 41 through 45 which were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 21, 2023.

Findings of Fact

Applicant is 62 years old and he resides with his partner. He has a Master's in Business Administration. He is employed by a defense contractor as a Senior Facilities Planner. He is seeking to obtain a security clearance in connection with his employment.

The SOR alleges that Applicant is indebted to five creditors involving credit card debt totaling approximately \$28,434. In his Answer, Applicant admits each of the allegations and provides explanations. A credit report of the Applicant dated December 20, 2022, reflects that each of these debts were at one-time owing. (Government Exhibit 3.)

Applicant began working for his current employer in September 2021. Prior to 2014, Applicant was committed to his financial obligations, never overextended himself financially, and he paid his bills on time.

Beginning in 2014, and continuing off and on until at least 2021, Applicant encountered extraordinary life events that hindered his ability to meet his financial obligations. To sum up his situation, he experienced a number of serious medical issues that prevented him from working and caused additional financial indebtedness. As a result, he was unable to pay his debts.

In August 2014, Applicant suffered from his third hernia injury, a bilateral hernia causing him to be out of work for nearly six months due to the healing process. In February 2015, he suffered complications from his surgery forcing him to be hospitalized for five days, which was diagnosed as an intestinal obstruction. This time he was off work, and without medical insurance, which led him to apply for state assistance. He was released from the hospital but was not given an explanation for his condition. He still needed medical treatment. (Applicant's Exhibits 3A, 3B, 3C, and 4.)

In May 2015, Applicant experienced another intestinal obstruction complication and was in the hospital emergency room for 12 hours and still the doctors were uncertain as to why he was experiencing the condition. From May to June 2015, Applicant saw three surgeons who tried to determine the cause and prevention of these intestinal obstructions. Applicant underwent a number of tests and scans and two of the three surgeons were unable to find a cause for his condition. Applicant was still unable to work. He felt ill all of the time, he could not eat properly, and he lost 55 pounds. He depleted his savings account to pay for some of his financial obligations. (Applicant's Exhibits 5, 6, 7A, 7B, 8 and 9.)

In July 2015, a third surgeon indicated that emergency surgery was imminent to repair what he believed was a new hernia. During the surgery he discovered that the original hernia was done incorrectly, the mesh had come loose and was strangling the small intestine. For about six months following surgery, Applicant underwent physical therapy, received multiple injections for pain, and managed his PTSD from the traumatic event. (Applicant's Exhibits 10, 11, and 12.)

From 2016 to 2018, Applicant went back to work but still faced residual pain and suffered from PTSD. He was unable to recover financially, but managed to live paycheck to paycheck and paid all of his monthly expenses with minimum payments.

In November 2017, Applicant was laid-off of his job due to company downsizing and he moved back in with his family who lived out of state. His partner was also laid off from her job. By moving back in with his family, Applicant was able to help take care of his mother who had breast cancer and went through surgery. She also fell and broke her hip. About this same time, Applicant's partner's mother was going in for double knee surgery. (Tr. p. 55.) At this point, Applicant was solely living on his credit cards. Money was scarce and Applicant used it to buy food, gas, car insurance, utilities, and other necessary living expenses. The debts listed in the SOR were last paid in 2017 or early 2018. (Tr. p. 53.) Applicant could not afford to make payments towards these debts. (Applicant's Exhibits 16 and 17.)

In 2019, Applicant moved back to California after securing employment. He stated that he had planned to start addressing his debts when COVID hit. As a result, he lost his job, and his partner lost her job. From September 2020 to September 2021, Applicant was unemployed. (Applicant's Exhibits 18A, 18B, and 19.)

In September 2021, post-COVID, Applicant was able to secure a job with his current employer. He stated that he is now finally getting re-established and has every intention of resolving his delinquent debts. In March 2023, Applicant contacted his creditors to set up payment arrangements to resolve his debts. (Applicant's Exhibit 20.)

The following delinquent credit card debt is of security concern:

1.a. Applicant is indebted to a creditor in the amount of \$10,347 for an account that was placed for collection. Applicant used this credit card for living expenses and related matters. In March 2023, he set up a payment arrangement to settle the debt. The agreement requires that he make six monthly payments of \$517.38 to resolve the debt. He stated that he may resolve it sooner when he receives his tax rebate, which he plans to use to pay off the remainder of the debt owing. Applicant made his first payment towards the debt on March 6, 2023. (Tr. pp. 67-70, and Applicant's Exhibits 25, 26, and 31.)

1.b. Applicant is indebted to a creditor in the amount of \$8,635 for an account that was placed for collection. Applicant used this credit card for living expenses and related matters. In March 2023, he set up a payment arrangement to settle the debt for \$2,159.71, by making three monthly payments of \$719.90 through automatic

deductions. He made his first payment towards the debt on March 3, 2023. (Tr. pp. 70-72, and Applicant's Exhibits 25, 27, 33, and 34.)

1.c. Applicant is indebted to a creditor in the amount of \$3,639 for an account that was placed for collection. Applicant used this credit card for living expenses and related matters. In March 2023, he set up a payment arrangement to settle the debt. The agreement requires that he make six monthly payments of \$363.95. He made his first payment towards the debt on March 6, 2023. (Tr. pp. 72-73, and Applicant's Exhibit 25, 29.)

1.d. Applicant is indebted to a creditor in the amount of \$2,975 for an account that was placed for collection. Applicant used this credit card for living expenses and related matters. In March 2023, he set up a payment arrangement to settle the debt. The agreement requires that he make three monthly payments of \$248.24. He made his first payment on March 6, 2023, towards the debt through automatic payment deductions. (Tr. pp. 73-74 and Applicant's Exhibits 25, 27, 33, and 34.)

1.e. Applicant is indebted to a creditor in the amount of \$2,838 for an account that was placed for collection. Applicant used this credit card for living expenses and related matters. In March 2023, he set up a payment arrangement to settle the debt. The agreement requires that he make six monthly payments of \$307.50. He made his first payment towards the debt on March 6, 2023. (Tr. p. 74-75, and Applicant's Exhibits 25 and 30.)

Applicant's partner does not work outside the home. She recently underwent foot surgery and incurred costs of \$1,900. (Applicant's Exhibit 24.) She is scheduled for another foot surgery next week. Applicant states that he will pay the costs totaling approximately \$5,000. He states that he has money to cover these expenses.

A letter of recommendation from Applicant's supervisor states that he is a great asset to the team who demonstrates great character through his honesty, reliability, respectfulness, trustworthiness, and integrity. (Applicant's Exhibit 42.)

Letters of recommendation from professional associates and friends of the Applicant attest to his professional nature. They describe him as a man of excellent character, who is dependable, courteous, caring, helpful, trustworthy, and responsible. (Applicant's Exhibits 35, 36, 37 and 38.)

Applicant's 2022 year-end performance review reflects that he has been a "Successful Performer" on the job. (Applicant's Exhibit 41.)

Applicant's income tax returns for tax year 2022 shows that he is expecting to receive a refund for a total of \$8,242. Applicant stated that he plans to use the refund to pay off his delinquent debt. (Applicant's Exhibits 43, 44, and 45.)

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 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 incurred debt he could not afford to pay. 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 largely beyond the Applicant's control were responsible for his excessive delinquent indebtedness, namely his major medical issues, numerous doctor appointments, multiple surgeries, and a significant period of downtime in order to heal that took several years to resolve, coupled with the consequences of COVID 19 and its restrictions, and his loss of employment. These devastating events significantly set back the Applicant's financial situation and impacted his ability to pay his debts. Until recently, he has not had stable full-time employment and been able to afford to pay his debts. He is now gainfully employed and focused on resolving his debts. He plans to use his 2022 income tax refund to pay his debts. All of his delinquent debts will be paid off fairly soon. He has acted reasonably and responsibly under the circumstances. Applicant has shown good judgment and reliability. There are clear indications that his financial problems of the past are being resolved and are under control. He has demonstrated a good-faith effort to resolve his debts. 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. Over the years, Applicant has encountered a series of medical problems that have significantly impacted his indebtedness, his ability to work, and to pay his debts. Through no fault of

his own, he was also confronted with Covid and the loss of his employment and was unable to afford to resolve his past financial obligations. Since becoming gainfully employed, he has recently set up payment arrangements with each of the creditors set forth in the SOR. He has already made his first payment, and he plans to follow through with his commitment each month to move closer to fully resolving his debts. In the event that he does not follow through with his commitment, his security clearance will be in immediate jeopardy. However, he has demonstrated that he is responsible and uses good judgment. He meets the eligibility requirement for access to classified information.

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:

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| 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