



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



In the matter of:)
)
) ISCR Case No. 22-02390
)
)
Applicant for Security Clearance)

Appearances

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

August 8, 2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On October 23, 2020, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On February 24, 2023, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 *Adjudicative Guidelines*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on March 12, 2023, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on May 18, 2023, and the hearing was convened as scheduled on June 21, 2023, and June 22, 2023. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on his own behalf. The record remained open until close of business on July 6, 2023, to allow Applicant the opportunity to submit supporting documentation. Applicant

submitted nothing further. DOHA received the transcript of the hearing (Tr.) on July 5, 2023.

Findings of Fact

Applicant is 41 years old. He is married with two children. He has Air Force military training, twenty-two years in the service, and four Associate's degrees in the following fields of discipline: Information Technology; Arts; Military Science; and Communications Technology Applications. He is employed by a defense contractor as a Systems Engineer. 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 seven delinquent debts totaling approximately \$31,000, involving collections and charge off accounts, and one allegation for misuse of the government credit card showing a history of financial problems. Applicant also engaged in inappropriate behavior showing poor judgment when he borrowed money from a subordinate while on active duty military service. Applicant admits with explanations each of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated October 28, 2020; March 29, 2022; February 14, 2023; and May 8, 2023, confirm that each of the debts remain outstanding. (Government Exhibits 5, 6, 7 and 8.)

Applicant served on active duty in the United States Air Force from March 2000 until October 2021, when he was honorably discharged. During his military career he underwent five deployments, three times to Iraq, and to Qatar, and the United Kingdom. Applicant stated that he was a hard worker and high achiever in the military. In his answer to the SOR, Applicant outlines some of his military accomplishments. Applicant has held a security clearance since 2004.

Applicant began working for his current employer in February 2023. He earns about \$110,000 annually. He receives Air Force retirement of about \$2,000 monthly. He also receives about \$4,000 monthly in VA disability due to being 100 percent disabled. His job with a defense contractor requires a security clearance.

Applicant explained that his parents immigrated to the United States from the Philippines. Applicant joined the Air Force at the young age of 18, in March 2000. He married in 2008. He and his wife have struggled to live within their means since he started earning money in the Air Force. Applicant purchased a house in 2009. He bought his wife a new car in 2010 or 2011. By about 2013 or 2014, he had to short sale

his house. He stated that he was also instructed to stop making payments on his other bills in order to obtain the short sale. Most of these debts remain outstanding.

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

1.a. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$11,683. Applicant explained that this is a delinquent credit card that he stopped paying. Applicant testified that about three months ago, after receiving the SOR and after applying for a security clearance, he hired Lexington Law Firm to assist him in resolving his delinquent debts. No major action had been taken yet. This debt remains owing. (Tr. p. 47.)

1.b. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$8,660. Applicant stated that this is a delinquent credit card debt. The debt remains owing. (Tr. p. 48.)

1.c. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,651. Applicant explained that this is an online personal loan he obtained to help meet his expenses. He claims that the debt is under dispute and has been since 2015 or 2016. (Tr. pp. 49-53.) The debt remains owing.

1.d. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,582. Applicant stated that this is a delinquent credit card. The debt remains owing. (Tr. pp. 56-57.)

1.e. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,241. Applicant stated that this is a delinquent credit card. Applicant contends that he has paid off this debt. He has not provided any documentation to show that the debt has been resolved. (Tr. pp. 56-57.) The debt remains owing.

1.f. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$707. Applicant stated that this is a delinquent credit card. Applicant claims that this debt is related to a timeshare that he purchased sometime between 2008 and 2012. Applicant contends that he has paid the debt. He has not provided documentation to show that the debt has been resolved. (Tr. pp. 59-60.) The debt remains owing.

1.g. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$5,676. Applicant explained that this is a car loan that Applicant contends has been paid off. He has not provided documentation to show that the debt has been resolved. (Tr. p. 61.) The debt remains owing.

1.h. In August 2016, while on active duty with the United States Air Force, Applicant received non-judicial punishment for Misuse of a Government Travel Card. Applicant explained that he was stationed in Texas at the time. He was on a family trip, and on leave from work to spend New Year's Eve in Las Vegas. He used his Government

credit card to charge about \$300 for food and gas. He stated that when he returned home, he paid off the debt. (Tr. p. 65.) Applicant knew at the time that he was in violation of military rules and regulations. As a result of this misconduct, Applicant lost his rank and his security clearance was suspended for about five or six months. (Tr. pp. 68.) His rank was eventually reinstated.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant admitted the allegations set forth under this guideline.

2.a. As discussed above, in August 2016, Applicant misused his Government credit card while on vacation in Las Vegas, and used it to purchase personal items. Applicant received non-judicial punishment for Misuse of the Government Travel Card. He was reduced in rank and his security clearance was suspended for five or six months. At some later date, Applicant's rank was reinstated upon application to the Air Force. (Tr. pp. 62-67.)

2.b. In about January 2021, while on active duty with the United States Air Force, Applicant received a Letter of Reprimand for borrowing money from a subordinate. Applicant explained that he was a Staff NCO, Tech Sergeant, E-6 in the Air Force when he went to his subordinate an E-4, a young Airman and borrowed either \$1,200.00 or \$1,500.00 from him. Applicant explained that he needed the money at the time as his car needed maintenance, and his credit was not good. He did not strong arm his subordinate to loan the money to him, but does recognize the power difference between the two of them, and knew that it was inappropriate to ask his subordinate for help. Applicant stated that he set up a payment arrangement to pay his subordinate back at the rate of \$500 a month. Applicant's supervisor heard about this situation from other airmen and Applicant was disciplined. Applicant received non-judicial punishment for this misconduct, lost rank, and was not recommended for promotion. Following this, Applicant retired from the military. (Tr. pp. 68-76.)

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. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 applies for access to classified information seeks to enter 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 relating to the guideline 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. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant has incurred delinquent debts that he could not afford to pay. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I have considered each one of them set forth below:

- (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, 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 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;
- (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.

For many years, Applicant has lived beyond his means, spending more money than he could afford. He has not demonstrated that his financial indebtedness has been resolved and is unlikely to recur. Accordingly, this guideline is found against Applicant.

Guideline E - Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information; and

(2) any disruptive, violent, or other inappropriate behavior.

Applicant's inappropriate behavior reflects a pattern of poor judgment which is related to his financial indebtedness. In 2016, he misused the Government credit card and purchased personal items with it, knowing it to be against Federal rules and military policy. Applicant's own credit cards were not in good standing nor did he have the money to pay for these personal items. In addition, in January 2021, while on active duty, Applicant borrowed a large amount of money from a subordinate to repair his car because he could not afford to pay for it himself. This was also against military rules and regulations. His inappropriate behavior and lack of integrity and responsibility shows poor judgment, untrustworthiness, and unreliability. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

To be eligible for access to classified information, Applicant's overall character and conduct must consistently show a pattern of honesty, integrity, good judgment and reliability. Applicant has not demonstrated a consistent pattern of good judgment. In fact, he has shown poor judgment impacted by his history of financial indebtedness. Applicant needs more time to show that he can resolve his debts and use good judgment to be trusted under any circumstances. Under the particular facts of this case, none of the mitigating conditions are applicable. Accordingly, this guideline is found against the Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. At this time, Applicant has not demonstrated that he can be trusted with the national secrets. This is not an individual with whom the Government can be confident to know that he will always follow rules and regulations, and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a through 1.h.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a and 2.b.	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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge