



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



In the matter of:)
)
) ISCR Case No. 23-00324
)
)
Applicant for Security Clearance)

Appearances

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

August 8, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On May 9, 2022, Applicant submitted a security clearance application (e-QIP). On April 5, 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. 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 April 20, 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 22, 2023, and the hearing was convened as scheduled on June 23, 2023. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, 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 July 7, 2023, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted three Post-Hearing Exhibits referred to as D, E, and F which were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 5, 2023.

Findings of Fact

Applicant is 37 years old. He is engaged and living with his girlfriend. He has two children, ages 5 and 15. He has a high school diploma. He holds the position of Bond Room Technician. 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-six allegations consisting of a failure to file Federal and State income tax returns, as well as numerous delinquent debts totaling in excess of \$50,979, which includes collections, charge-offs, medical accounts, tax debt, and child support arrearage, among other consumer debt. Applicant admits each of the allegations with explanations, except allegations 1.w., and 1.x., which he denies, claiming that they have been paid. Credit reports of the Applicant dated March 27, 2022; January 26, 2023; and May 9, 2023, confirm that he is or at one time was indebted to each of the creditors listed in the SOR. (Government Exhibits 5, 6, and 7.)

Applicant began working for his current employer on April 25, 2022. He has never worked for a defense contractor or applied for a security clearance before. He enjoys his job and has already received a promotion. He has applied for leadership positions and is being considered. (Tr. p. 25.)

Applicant attributes his financial problems to a car accident he was in, in February 2019. He was a passenger in the backseat of his friend's off roading vehicle, while off roading, when the vehicle rolled over. Applicant stuck his hand out during the roll and broke it. He underwent five surgeries and spent three weeks in the hospital. This was followed by home care and therapy until he could no longer afford it. Applicant submitted medical records corroborating his injury. (Applicant's Post-Hearing Exhibit D.) During this time, Applicant could not work and to support himself and his family, he collected unemployment and disability. Applicant stated that because of this accident, and the extensive injury to his hand, he could not work for three years. (Tr. p. 53.) Applicant contends that prior to the accident he did not have most of the debt. He was

forced to decide between feeding his family or paying his bills. He decided to feed his family.

Applicant explained that he was also forced to sell his house. (Tr. p. 28.) He was not in a good place mentally, and he ignored filing his Federal and State income tax returns from 2019 to 2021. He stated that he plans to hire an attorney to assist him in repairing his credit situation. (Tr. p. 29.)

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

1.a. Applicant failed to file his Federal income tax returns for tax years 2019 through 2021. He has not yet filed these income tax returns.

1.b. Applicant failed to file his State income tax returns for tax years 2019 through 2021. He has not yet filed these income tax returns.

1.c. Applicant is indebted to the State in the amount of \$9,416 for delinquent taxes for tax year 2019. Applicant is making regular monthly payments of \$199, which are automatically deducted from his account via electronic funds withdrawal on the 28th of each month. (Applicant's Exhibit A.)

1.d. Applicant is indebted to a creditor in the amount of \$5,705 for an account that was placed for collection. Applicant claims that he has paid this debt, but provides no documentary evidence. The debt remains owing. (Applicant's Answer to SOR.)

1.e. Applicant is indebted to a creditor in the amount of \$3,838 for an account that was placed for collection. This was a credit card. The debt remains owing. (Tr. p. 45.)

1.f. Applicant is indebted to a creditor in the amount of \$3,372 for an account that was placed for collection. This was a credit card. The debt remains owing. (Tr. p. 46.)

1.g. Applicant is indebted to a creditor in the amount of \$3,361 for an account that was placed for collection. This was a credit card. The debt remains owing. (Tr. p. 46-47.)

1.h. Applicant is indebted to a creditor in the amount of \$2,695 for an account that was placed for collection. This was a credit card. The debt remains owing. (Tr. p. 47.)

1.i. Applicant is indebted to a creditor in the amount of \$2,462 for an account that was charged off. This was a credit card. The debt remains owing. (Tr. p. 47.)

1.j. Applicant is indebted to a creditor in the amount of \$2,037 for an account that was placed for collection. This was a credit card. The debt remains owing. (Tr. pp. 47-48.)

1.k. Applicant is indebted to a creditor in the amount of \$1,463 for an account that was placed for collection. This was a credit card. The debt remains owing. (Tr. p. 48.)

1.l. Applicant is indebted to a creditor in the amount of \$1,236 for an account that was charged off. This was a credit card. The debt remains owing. (Tr. p. 48.)

1.m. Applicant is indebted to a creditor in the amount of \$953 for an account that was placed for collection. The debt remains owing. (Tr. p. 48.)

1.n. Applicant is indebted to a creditor in the amount of \$936 for an account that was placed for collection. Applicant contends that he has paid this debt, but provides no documentary evidence. (Tr. p. 50.)

1.o. Applicant is indebted to a creditor in the amount of \$726 for an account that was placed for collection. This was a medical debt. Applicant paid the debt for \$713. (Applicant's Exhibit C.) The debt is no longer owing.

1.p. Applicant is indebted to a creditor in the amount of \$470 for an account that was charged off. The debt remains owing. (Applicant's Answer to SOR.)

1.q. Applicant is indebted to a creditor for a medical co-pay in the amount of \$49 for an account that was placed for collection. Applicant stated that he has paid the debt, but provides no documentary evidence. The debt remains owing. (Tr. p. 52.)

1.r. Applicant is indebted to the State Child Support authorities for back child support in the amount of \$7,440 for an account that was placed for collection. Applicant stated that the payment is currently being garnished from his paycheck in the amount of \$166 per week, about \$650 monthly, which includes his required current payment of \$550, and for his arrearage for \$100 that began when he started his current employment. (Applicant's Exhibit B, and Tr. p. 53-57.)

1.s. Applicant is indebted to a creditor in the amount of \$2,467 for an account that was charged off. The debt remains owing. (Tr. pp. 60-61.)

1.t. Applicant is indebted to a creditor in the amount of \$558 for an account that was charged off. The debt remains owing. (Tr. p. 61.)

1.u. Applicant is indebted to a creditor in the amount of \$453 for an account that was placed for collection. The debt remains owing. (Tr. p. 62.)

1.v. Applicant is indebted to a creditor in the amount of \$119 for a medical co-pay for an account that was placed for collection. Applicant stated that he has paid the debt, but provides no documentary evidence. The debt remains owing. (Tr. p. 62.)

1.w. Applicant is indebted to a creditor for a medical co-pay in the amount of \$75 for an account that was placed for collection. Applicant stated that he has paid the debt, but provides no documentary evidence. The debt remains owing.

1.x. Applicant is indebted to a creditor for a medical co-pay in the amount of \$50 for an account that was placed for collection. Applicant stated that he has paid the debt, but provides no documentary evidence. The debt remains owing. (Tr. p. 63.)

1.y. Applicant is indebted to a creditor for a medical co-pay in the amount of \$50 for an account that was placed for collection. Applicant stated that he has paid the debt, but provides no documentary evidence. The debt remains owing. (Tr. p. 63.)

1.z. Applicant is indebted to a creditor for a medical co-pay in the amount of \$50 for an account that was placed for collection. Applicant stated that he has paid the debt, but provides no documentary evidence. The debt remains owing. (Tr. p. 63.)

Applicant also had to sell his house. After paying off the mortgage, he had about \$30,000 that he used towards other debts and taxes. (Tr. p. 58.)

Between the Applicant and his girlfriend, their household income totals about \$8,000 monthly after taxes. He stated that after paying his regular monthly expenses, he has between \$2,500 to \$3,000 left in discretionary funds that he could use toward his delinquent debts. He has not used this money to pay his delinquent debts because he has had moving expenses and apartment rental obligations. He has contacted a Credit Management Company to consolidate his debt to help resolve it. Applicant stated that the payment program requires Applicant to pay \$450 monthly towards his delinquent debt for 48 months and his debt will be completely resolved. He has not yet started making the payments. (Tr. p. 74-75.)

Letters of recommendation from Applicant's direct manager and other professional colleagues and coworkers attest to Applicant's impeccable work ethic, excellent character, dedication to the job, strong knowledge and background with an excellent skill set. He is polite, respectable, and levelheaded. Applicant is recognized as an all-around great person who is highly dependable, and volunteers when others are supposed to and they fail to show up. He is a very valuable member of the team. (Applicant's Post-Hearing Exhibit E.)

Applicant has received a number of awards and commendations for his collaboration and innovation on the job, as well as a Certificate of Recognition for his dedicated service. (Applicant's Post-Hearing Exhibit F.)

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant incurred excessive delinquent debt that he has been unable to pay. His actions or inactions both demonstrate a history of not addressing his debt and 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;
- (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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's accident in 2019, and then his inability to work for three years, largely contributed to his financial delinquencies. However, for the past year and a half he has been working full time with over time. He has slowly started paying some of his smaller debts off. However, he remains excessively indebted. There is no evidence showing that he has made significant progress towards resolving his debts. In fact, the only debts he states he has paid on his own, but provided no documentary evidence to confirm, were his medical co-pay accounts which required only a small payment of \$50 or \$75. Two other debts are being paid through garnishment or automatic payments, and the bulk of the debt remains owing. Most troubling is the fact that Applicant has between \$2,500 and \$3,000 in discretionary funds each month that he could use to pay his delinquent debts, but has chosen not to do so. This does not show good judgment. In fact, Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. Applicant needs more time to show the Government that he will continue to properly resolve his financial delinquencies with regular systematic payments and consistency. None of the mitigating conditions are applicable.

There is insufficient evidence in the record to show that Applicant's delinquent debts have been resolved. Overall, Applicant shows little progress towards resolving his debts. He still owes a significant amount of money to his creditors that he obviously has not seen as a priority to resolve. 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. In the event that Applicant follows through with his commitment to show financial responsibility, sometime in the future he may be 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.x.	Against Applicant
Subparagraphs 1.c., 1.o., and 1.r.	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge