



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



In the matter of: )  
)  
) ISCR Case No. 22-01921  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

August 7, 2023

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On August 3, 2021, Applicant submitted a security clearance application (e-QIP). (Item 3.) On October 6, 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. (Item 1.) 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on November 7, 2022. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on February 28, 2023. A complete copy of the File of Relevant Material (FORM), containing seven Items was received by Applicant on March 27, 2023. He was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA assigned the case to me on July 21, 2023. Items 1 through 7 will hereinafter be referred to as Government Exhibits 1 through 7.

### **Findings of Fact**

Applicant is 61 years old. He is married with three children. He has a Bachelor's degree. He is employed by a defense contractor. His position is unclear. 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 alleges that the Applicant is indebted to seven delinquent accounts totaling in excess of \$94,365. Applicant admits allegations 1.a., 1.b., and 1.d. listed in the SOR, noting that he is working to address them. He denies allegations 1.c., and 1.d., asserting that they have been paid off. He also denies allegations 1.f., and 1.g. because they are student loans for his children that he co-signed for and are in forbearance.

Credit reports of the Applicant dated August 10, 2021; and May 24, 2022, confirm the indebtedness. (Government Exhibits 4 and 5.) Applicant served in the U.S. Air Force from July 1979 to September 1988, and received an honorable discharge. From September 1988 to May 2012, Applicant was in the FBI and retired as a Supervisory Special Agent. He began working part time as a 1099 contractor for a Federal defense contractor in October 2016. Since March 2017, Applicant has also been self-employed as the owner of a security firm and private investigations company. Applicant held a prior security clearance while working for the FBI.

Applicant does not explain how or why he became delinquently indebted. He has not provided any documentation to support the fact that he has paid off any of his delinquent debts. Furthermore, he has not provided any documentation to support his statement that the student loans he co-signed for his children are in forbearance.

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

1.a. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$21,261. The debt remains owing. (Government Exhibits 4 and 5.)

1.b. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$17,212. The debt remains owing. (Government Exhibits 4 and 5.)

1.c. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$10,916. Applicant asserts that he has paid the debt, but he provides no documentation to support this statement. The debt remains owing. (Government Exhibits 4 and 5.)

1.d. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$8,294. The debt remains owing. (Government Exhibits 4 and 5.)

1.e. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$1,465. Applicant asserts that he has paid the debt, but he provides no documentation to support this statement. The debt remains owing. (Government Exhibits 4 and 5.)

1.f. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$9,284. The debt remains owing. (Government Exhibits 4 and 5.)

1.g. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$25,933. The debt remains owing. (Government Exhibits 4 and 5.)

In 1988, Applicant's house was foreclosed upon. He no longer owns this house. In the spring of 2015, another house of Applicant's was foreclosed upon. Applicant stated that he was told by the lender to stop making payments on the loan, to allow it to go delinquent for 90 days, and then he could obtain a "deed in lieu of foreclosure" which would prevent him from owing anything more on the loan. (Government Exhibit 7.)

During his personal interview on August 18, 2021, Applicant stated that his financial situation was good, and that he is willing to repay his debts. (Government Exhibit 7.)

## **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 incurred delinquent debt he could not afford to pay. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been working part-time with his current employer and security clearance sponsor since October 2016. Since March 2017, he has also owned and operated a security firm and private investigation company. From the limited evidence presented, his debts remain delinquent and owing. Applicant's inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. Accordingly, Applicant does not meet the requirements to access classified information.

There is nothing in the record to demonstrate that Applicant has made efforts to mitigate the Government's concerns under Guideline F. Without documentary evidence substantiating his assertions that he has been making payments to the creditors, that he is currently financially responsible, and that he is able to meet his future financial

obligations, Applicant has not carried his burden of proof to establish mitigation of the security concerns alleged in the SOR.

### **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.

While Applicant claims that he has paid off two of his debts, he has submitted no documentary evidence to support his claims. 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 concerns.

### **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.g.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge