



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



In the matter of:)	
)	
)	ISCR Case No. 22-00335
)	
)	
Applicant for Security Clearance)	

Appearances

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

August 28, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On February 18, 2021, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On May 4, 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 and Guideline B, Foreign Influence. 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 August 24, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2022. Applicant was not available for hearing for several months due to the fact that his

mother was in hospice, and he was caring for her. 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 7, 2023. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant's Exhibits A through G, which was admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 16, 2023.

Ruling on Procedural Withdrawal of Guideline B

The Government withdrew Guideline B, and accordingly, it has been removed from the SOR and will not be adjudicated. (Tr. p. 30-31.)

Findings of Fact

Applicant is 33 years old. He is twice divorced, resides with his girlfriend, and they have a two-year old daughter. He has Air Force military training, and a Master's Degree in Cybersecurity. He holds the position of Systems Administrator. 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 eleven allegations consisting of delinquent debts totaling in excess of \$240,000, which include charge-offs and collection accounts. Applicant admits each of the allegations with explanations. Credit reports of the Applicant dated May 9, 2022; and September 14, 2022, confirm that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 3 and 4.)

Applicant served in the U.S. Air Force from 2011 through March 2018. During his military career, Applicant was deployed four times, including to Abu Dhabi, Kuwait and Qatar. During his last deployment, Applicant was seriously injured and became permanently and 100 percent disabled. He receives \$4,200 a month for his disability. In March 2018, he received an honorable discharge, and retired as an Staff Sergeant, E-5. (Tr. pp. 21-22.)

Applicant explained that his delinquent financial history started during his first deployment in the military. (Tr. p. 32.) Applicant was married to his first wife from 2011 to 2015. His wife did not work outside of the home. During his first deployment, his wife had access to his bank account, and was supposed to pay the household bills and keep everything current. Instead, she enjoyed buying expensive designer hand bags and

other luxury items. She was not educated on how to properly manage finances. She made minimum payments toward some of the debts and others she ignored. At the time of their divorce in 2015, Applicant was indebted in the amount of \$60,000. (Tr. pp. 33 and 39.)

In 2017, Applicant married his second wife. At the time they were married, Applicant was leaving on deployment, and they never moved in together. She lived with her parents and she stayed there. She had access to Applicant's bank account and she was expected to pay his household bills for him while he was deployed. Unbeknownst to the Applicant, she did not pay the bills. Instead, she spent his money on other things, but he is not sure what she purchased.

During his last deployment, Applicant was seriously injured when a forklift hit him in the head causing traumatic brain injury, and a broken knee and back. (Tr. p. 22.) In March 2018, Applicant was discharged from the Air Force. At that time, he moved in with his mother who helped take care of him. He received unemployment benefits, and underwent extensive therapy and rehabilitation at VA medical facilities. (Tr. p. 40.) Applicant was not aware of the extent of his financial indebtedness until he started receiving letters from creditors that told him how much debt he owed. By this time, Applicant's debt had increased from \$60,000 to \$240,000. (Tr. p. 40.) He divorced his second wife in 2019. (Tr. p. 23.)

Upon learning of the debt, Applicant contacted each of the creditors to set up a payment plan. He also contacted an attorney and was advised to file for Chapter 7 bankruptcy to discharge his debt. A letter from his attorney dated August 24, 2022, confirms the arrangement. (Applicant's Exhibit F.) Applicant found it difficult to contact this attorney, and as a result, was not able to make progress towards resolving his debts. (Tr. p. 47.) In May 2023, Applicant hired another law firm to help him. This law firm moved swiftly, and filed the Chapter 7 Bankruptcy petition in June 2023. (Applicant's Exhibit C, and Tr. p. 48.) Applicant stated that each of the creditors listed in the SOR were named in the in the Chapter 7 bankruptcy petition. (Applicant's Exhibit C.) The debts are not yet discharged.

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

1.a. Applicant is indebted to a creditor in the amount of \$32,848 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.b. Applicant is indebted to a creditor in the amount of \$30,579 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.c. Applicant is indebted to a creditor in the amount of \$30,193 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.d. Applicant is indebted to a creditor in the amount of \$29,551 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.e. Applicant is indebted to a creditor in the amount of \$27,485 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.f. Applicant is indebted to a creditor in the amount of \$25,646 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.g. Applicant is indebted to a creditor in the amount of \$18,874 for an account that was charged off. This is a personal loan. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.h. Applicant is indebted to a creditor in the amount of \$15,269 for an account that was placed for collection. This is a personal loan. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.i. Applicant is indebted to a creditor in the amount of \$10,364 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.j. Applicant is indebted to a creditor in the amount of \$5,589 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. The debt remains owing.

1.k. Applicant is indebted to a creditor in the amount of \$15,269 for an account that was charged off. This is a delinquent credit card. The debt has been included in the Chapter 7 Bankruptcy petition filed in June 2023. Applicant believes that this is the same debt listed in 1.h., above. (Tr. p. 52.) It is unclear from the evidence whether this debt is the same debt listed in 1.h., or whether this is a separate debt. The debt remains owing.

Applicant is currently working with his attorney to get his debts discharged as soon as possible. Applicant has learned from this experience and understands that he must be extremely careful in handling his finances to ensure that his bills are always paid on time, and that he lives within his means. He stated that he plans to never use credit cards again.

Applicant has a new girlfriend who works as a Program Manager and earns about \$120,000 annually. He stated that she is financially responsible. Applicant earns about \$99,000 annually, not including overtime and bonuses. (Tr. p. 19.) They have a daughter who was born in 2021. They live together and split the monthly expenses which include their house payment, utilities, and child-care for their daughter. Applicant pays his own car payment and other miscellaneous expenses. He stated that after

paying all of his monthly bills, he has about \$2,500 left in discretionary funds. (Applicant's Exhibit E.) Applicant has a 401(k) that has about \$34,000 in it. He plans on marrying his girlfriend in the near future.

Nine letters of recommendation from coworkers and military associates indicate that Applicant is an upstanding citizen and a hard worker. He is always professional and respectful. He follows all company rules and regulations concerning how to properly protect classified information. Applicant has given them no reason to question his honesty, trustworthiness and reliability. (Applicant's Exhibit B.)

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 to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred delinquent debt while in the military on deployment. He was under the impression that his wife at the time, who had access to his bank account, would pay the household bills when in fact his bills were not properly addressed. This established a history of financial hardship. 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, clear victimization by predatory lending practices, or identity theft), 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 became delinquently indebted because his ex-wives were not financially responsible. He made the mistake of trusting them. He has now learned that he cannot trust anyone with the responsibility of paying his bills. Applicant has recently directed his focus at resolving his delinquent debts. He has filed for Chapter 7 bankruptcy and is in the process of discharging the debt. Applicant's serious injury during his last deployment in the military was also a reason for his failure to address his financial problems immediately upon learning about them. On the surface this appears to be a situation where Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. However, a deeper analysis shows that Applicant was not the individual who engaged in reckless spending and ignored the bills. In fact, when Applicant realized how indebted he was, he hired attorneys to help him. He filed Bankruptcy in June 2023, to discharge the debt. Under the particular circumstances of this case, Applicant has done everything possible to resolve his indebtedness as soon as possible. Mitigating conditions (a) through (d) are applicable.

There is sufficient evidence in the record to show that Applicant's delinquent debts are being resolved. Overall, Applicant has shown that he is making progress towards resolving his debts. He has filed for Chapter 7 Bankruptcy and is currently waiting for the court to discharge the debts. There is sufficient 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's delinquent debts incurred by his two ex-wives while he was deployed overseas in the military are currently listed in a Chapter 7 Bankruptcy petition filed with the court in June 2023, awaiting discharge. Under the circumstances, this shows good judgement, reliability, and trustworthiness.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a. through 1.k.	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge