



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



In the matter of:)	
)	
)	ISCR Case No. 22-02544
)	
)	
Applicant for Security Clearance)	

Appearances

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

September 29, 2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On May 16, 2022, Applicant submitted a security clearance application (e-QIP). On May 29, 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. (Item 1.) 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 (AG); effective for cases after June 8, 2017.

Applicant answered the SOR on April 25, 2023, and requested a hearing before an administrative judge. The case was assigned to me on May 31, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 16, 2023, and the hearing was convened as scheduled on August 24, 2023. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered no exhibits, however he did testify on his behalf. DOHA received the transcript of the hearing on September 1, 2023.

Findings of Fact

Applicant is 54 years old. He is divorced after 30 years of marriage, but still cohabitating with his ex-wife. He has no children. He has a high school diploma and technical school in the field of electrical and industrial controls. He is employed with a defense contractor as a Reliability Engineer. He is applying for 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 ten delinquent debts that have been charged off, placed for collection, or are past due mortgage accounts, totaling approximately \$96,000. Applicant also has an unpaid judgment filed against him for approximately 1.5 million dollars. Applicant admits to each of the delinquent accounts listed in the SOR. Credit Reports of Applicant dated May 27, 2022; and March 16, 2023, confirm the indebtedness listed in the SOR. (Government Exhibits 3 and 4.)

Applicant served on active duty in the U.S. Navy from December 1986 to January 1990. He then joined the Navy reserves where he served for three years. He received an honorable discharge. While in the military he held a security clearance without incident.

After leaving the military, Applicant worked a few jobs and then in 1994, got into an electrical apprenticeship which allowed him to work and go to school. He also took classes in industrial controls. In 1996, he decided to start his own company doing industrial controls. By 1998, he decided to start a partnership business venture with a friend he met in the Navy, who married his mother and who became Applicant's step-father. The business was successful from 1998 until 2017, when Applicant was forced to close the doors. As a result of the downturn in the economy, Applicant's business partnership venture, followed by a period of self-employment, caused Applicant to become delinquently indebted and unable to pay his debts. Applicant started working for a defense contractor in April 2022, and a month later, he applied for a security clearance. He currently earns about \$162,000 annually.

The following delinquent debts listed in the SOR remain owing:

1.a. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$25,682. This was Applicant's personal credit card that he used to finance his self-employment after closing his business. Applicant stated that his mother is currently divorcing her husband, (Applicant's ex-business partner) and that she has asked to obtain control of the court judgment against Applicant. If so, she plans

to vacate or settle the debt with Applicant. Once this happens, Applicant stated that he may file for Bankruptcy and discharge his debts. The debt remains owing. (Tr. p. 53).

1.b. A delinquent debt owed to a creditor was charged off in the approximate amount of \$21,646. This was Applicant's personal credit card that he used to finance his self-employment after closing his business. Applicant stated that his mother is currently divorcing her husband, (Applicant's ex-business partner) and that she has asked to obtain control of the court judgment against Applicant. If so, she plans to vacate or settle the debt with Applicant. Once this happens, Applicant stated that he may file for Bankruptcy and discharge his debts. The debt remains owing. (Tr. p. 55).

1.c. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$11,382. This was Applicant's personal credit card that he used to finance his self-employment after closing his business. Applicant stated that his mother is currently divorcing her husband, (Applicant's ex-business partner) and that she has asked to obtain control of the court judgment against Applicant. If so, she plans to vacate or settle the debt with Applicant. Once this happens, Applicant stated that he may file for Bankruptcy and discharge his debts. The debt remains owing. (Tr. p. 56).

1.d. A delinquent debt owed to a creditor was charged off in the approximate amount of \$2,894. Applicant stated that he took out a personal loan in the amount of \$6,000 to cover moving expenses. He could no longer make the payments. The account remains owing. (Tr. pp. 56-57.)

1.e. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$1,668. This was a Home Depot credit card that Applicant used for business items. The debt remains owing. (Tr. p. 57.)

1.f. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$367. Applicant stated that he is not exactly sure what the debt is for and he has not attempted to resolve it. The debt remains outstanding. (Tr. p. 59.)

1.g. A delinquent mortgage account was reported as past due in the approximate amount of \$30,688. This is for Applicant's primary residence which was going to be foreclosed upon. Applicant contacted the lender and has set up a repayment agreement. Applicant stated that since August 2022, he has followed the terms of the repayment agreement and has reduced what he owes on both the first and second loans on the property to about \$77,000. (Tr. p. 60.)

1.h. A delinquent mortgage account was reported as past due in the approximate amount of \$1,324 with a balance of \$2,022. This was a mortgage on a home Applicant owns in Alaska. He stated that he has paid the debt in full. (Tr. p. 26.)

1.i. A delinquent credit card debt was reported as past due in the approximate amount of \$632, with a balance of \$3,588. This is Applicant's business credit card that he has not paid. The debt remains owing. (Tr. p. 61.)

1.j. A judgment was filed against the Applicant in 2017 in the approximate amount of \$1,511,304. Applicant was sued by his business partner, who was a friend of the Applicant's he met in the Navy; who is a year older than Applicant; and who married Applicant's mother. Applicant and his partner operated a business together from 1998 to 2017. Applicant's partner sued Applicant for breach of fiduciary duty claiming that Applicant was improperly paying or running his personal expenses through the company. There was no formal agreement between the parties. Applicant performed all of the industrial control work and his partner or stepfather, did electrical work. Applicant explained that from the beginning he worked full time and much harder than his partner, who worked only part-time and did less difficult jobs, working only when he wanted to. Applicant also generated most of the clientele base for the company. (Tr. pp. 36-45.)

In 2010, Applicant caught his mother stealing from the company. When she was supposed to be helping out by doing the "books", and was showing that the company was paying a vendor for something, she was actually writing a check to herself or her husband, Applicant's business partner. Over the years the company prospered, but it took a significant hit during the economic slowdown in 2008, and business significantly decreased. At this point, debts mounted and grew out of control. Applicant stated that he worked single handedly to pay off the company debt, and he tried to keep the business open for as long as he could. In 2017, Applicant closed the business. (Tr. pp. 35-45.)

Applicant denies that he has ever done anything wrong in handling the business affairs. To defend himself in litigation, Applicant hired an attorney, which cost him about \$70,000 over a six-month period. He then hired a second attorney to review things, and was told that he had a simple accounting case and needed an accountant. Applicant ran out of money before being able to do more, and his attorney walked away. Applicant stated that he does not have the money to pay the judgment and he has no intention of paying it. (Tr. pp. 51-52.)

Applicant explained that his mother is currently divorcing the man who was his business partner. If his mother's divorce results in her getting control of the court judgment against him, Applicant's mother has agreed to vacate it or settle it against the Applicant. Applicant stated that he will then do the right thing and take out a second mortgage on his house in Alaska and make offers with his creditors to settle the debts. (Tr. p. 57.) At this time, however, there is no documentary evidence to show that Applicant has done anything to resolve his delinquent debt.

Applicant was self-employed as a Control Systems Integrator from 2017 until November 2021, when he broke his hip, and was unable to work. He had no one to cover for him and he lost his customers. He eventually stumbled upon the job he now has.

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 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, 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial indebtedness. His answer to the SOR, his testimony, as well as his credit reports, clearly confirm this indebtedness. Applicant has not, for the most part, resolved his delinquent debts and they remain owing. Applicant failed to provide any documentary evidence to show that any of his delinquent debts are being resolved in any fashion. Although he testified that he has made payments on each of his two delinquent mortgages, and has paid off one of them in full, he has provided no documentary evidence to substantiate his testimony. Applicant has submitted no documentary evidence at all. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant explained that he became excessively indebted due to problems related to his business venture followed by a period of self-employment where he did not earn enough to support his expenses. Since then, and after becoming employed full time with a defense contractor, he has done little to nothing to resolve his delinquent debt. He is currently waiting to see the outcome of his mother's divorce from his ex-business partner to determine what he plans to do about his delinquent debts. He may file Bankruptcy and/or he may obtain a second on his mortgage loan to pay off debt. He is not sure. Under the particular circumstances here, Applicant has failed to establish that he has acted reasonably or responsibly with respect to his debts. Without documentation to substantiate his testimony, as it stands, Applicant has done nothing to resolve his debts. Furthermore, he has not demonstrated that future financial problems are unlikely. But, most importantly, it has not been demonstrated that his current financial problems are under control.

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.

There is nothing in the record to indicate when Applicant's financial indebtedness will be resolved, and whether it is likely to recur. There is insufficient documentation in the record to show that Applicant can control his finances and live within his means without difficulty. He remains excessively indebted.

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 in my whole-person analysis. There is insufficient documentation in the record to show that Applicant has made any effort to resolve or work toward resolving his delinquent debt. Accordingly, Applicant has not demonstrated that he is financially responsible.

Overall, the record evidence leaves me with 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 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

Subparagraphs 1.a through 1.j.: 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