



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



In the matter of:)
)
) ISCR Case No. 21-00192
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson Esq., Department Counsel
For Applicant: *Pro se*

11/13/2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 10, 2020, Applicant submitted a security clearance application (e-QIP). On June 30, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) 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 July 23, 2023, and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on August 24, 2023, and the hearing was convened as scheduled on October 3, 2023. The Government

offered five exhibits, referred to as Government Exhibits 1 through 5 which were admitted without objection. Applicant offered no exhibits. Applicant testified on his own behalf. The record remained open following the hearing, until close of business on October 17, 2023, to allow Applicant the opportunity to submit supporting documentation. Applicant submitted one Post-Hearing Exhibit, consisting of nine separate documents, which are referred to as Applicant's Post-Hearing Exhibits A through I, and were admitted without objection. DOHA received the final transcript of the hearing (Tr.) on October 12, 2023.

Findings of Fact

Applicant is 33 years old. He is divorced with no children. He has a Bachelor's of Science degree in Business Administration. He holds the position of Principal Logistics Management Analyst. 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 alleged that Applicant is indebted to seven creditors for charged-off delinquent consumer accounts totaling approximately \$38,000. In his answer, Applicant denies each of the allegations set forth in the SOR, explaining that he has either been making payments to resolve the debt, or he has already resolved it. Credit reports of the Applicant dated April 4, 2020; December 12, 2020; and August 10, 2023, confirm that at one time he was indebted to each of the creditors listed in the SOR. (Government Exhibits 3, 4, and 5.)

Applicant began working for a defense contractor in 2009, the same year he got married. Throughout his marriage, Applicant's employment provided the only source of income for the household. He not only supported himself and his wife, but at times he also provided for several of his wife's family members. Applicant and his wife enjoyed spending beyond their comfort zone, and in the past have had to borrow between \$12,000 and \$15,000 from his 401K to pay-off their debts. In 2016, Applicant and his wife separated. Even after their separation, Applicant continued to pay for his wife's car and for some of her bills. Their divorce was final in December 2022. (Applicant's Post-Hearing Exhibit G.)

As a result of excessive spending during his marriage, the following delinquent debts are of security concern:

1.a. Applicant was indebted to a creditor for an account placed for collection in the approximate amount of \$12,969. This is a credit card that Applicant and his ex-wife

used for living expenses. Since 2018, when Applicant set up a payment plan with the creditor, he has been making regular monthly payments of \$100 to resolve the debt. He has reduced the debt and currently owes approximately \$6,700. (Applicant's Post-Hearing Exhibit A, and Tr. pp. 22 - 23.) He plans to continue making the monthly payments until the debt is resolved.

1.b. Applicant is indebted to a creditor for an account that has been charged off in the approximate amount of \$8,874. This is a credit card that Applicant used to support himself and to purchase household items. (Tr. p. 24.) Applicant entered into a settlement arrangement and followed it. Applicant's last payment of \$334 owed on the account was made on October 15, 2021. This settled the debt in full. (Applicant's Post-Hearing Exhibit B.)

1.c. Applicant was indebted to a creditor for an account that has been charged off in the approximate amount of \$5,590. This is a credit card that Applicant and his wife used to pay for gas and living expenses. Applicant has for some time been making regular monthly payments in the amount of \$200 monthly to resolve the account. As of September 21, 2023, Applicant has reduced the debt, and currently owes approximately \$4,665. (Applicant's Post-Hearing Exhibit C, and Tr. p. 25.) He plans to continue making the monthly payments until the debt is resolved.

1.d. Applicant is indebted to a creditor for an account that has been charged off in the approximate amount of \$2,956. This is a credit card that Applicant used for car repairs, oil changes, and other expenses. Applicant entered into a settlement arrangement and followed it. He made payments of \$74.60 on a monthly basis until the debt was resolved in full on August 4, 2022. (Applicant's Post-Hearing Exhibit D.)

1.e. Applicant was indebted to a creditor for an account that has been charged off in the approximate amount of \$2,323. This is a car loan that Applicant took out during his marriage. When he separated from his wife, he let her keep the car. Applicant continued to make payments as best he could. He recently reduced the debt to \$1,723. (Applicant's Post-Hearing Exhibit E, and Tr. p. 27.) He plans to continue making the monthly payments until the debt is resolved.

1.f. Applicant was indebted to a creditor for an account that has been charged off in the approximate amount of \$335. This was for jewelry that Applicant purchased. Applicant stated that he resolved the debt in full in December 2020. (Tr. p. 27.) He has tried to obtain documentation from the creditor but has been unsuccessful.

1.g. Applicant was indebted to a creditor for an account that has been charged off in the approximate amount of \$5,371. This is a lending club loan that Applicant took out in 2010 to pay for household expenses. Applicant made regular monthly payments to resolve the debt and by June 21, 2023, he has reduced it to \$3,271. (Tr. p. 28.) A letter from the collection agency dated August 8, 2023, indicates that they received a payment of \$1,000 from the Applicant on July 31, 2023, and the debt is settled in full. (Applicant's Post-Hearing Exhibit F.)

Applicant has addressed each of his delinquent debts. He is now living within his means. He has set up a financial budget that he is following to prevent overspending in the future. After paying his regular monthly expenses, and the remaining monthly payments towards his few delinquent debts, sometimes he has some discretionary money left over, and some times he does not. He explained that his new girlfriend is financially responsible. She works for the same defense contractor that he does, she lives within her means at all times, and she holds a security clearance. They live together now, and share financial responsibilities in the household, including the mortgage payment. Staying financially responsible is key to their relationship. Applicant is no longer the sole supporter of the household. Applicant earns about \$90,000 annually. His girlfriend earns about \$130,000 annually, and she contributes to the mortgage and household expenses. Applicant has about \$150,000 in his 401k.

According to Applicant's divorce decree, he will soon be giving his ex-wife about \$30,000 from his 401k. He has about \$1,200 in his savings account, and \$500 in his checking account. He is now focused on living more frugally and being financially responsible.

Applicant was hired by his current employer in 2009 as an Electronic Technician. Over the years, he has received promotions and raises and other job opportunities due to his hard work and diligence. (Applicant's Post-Hearing Exhibit H.)

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 and his ex-wife had a habit of spending beyond their means. They used credit cards to support their lifestyle for many years. As a result, their debt accumulated and eventually became delinquent because they could not afford their lifestyle. His actions or inactions both demonstrated 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; 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 and his wife are now divorced. In addition to the costs involved in a divorce, Applicant has addressed each of the debts listed in the SOR. Even before he received the SOR, he was either making regular monthly payments to resolve them or he had already paid off the debt. He clearly understands the importance of being responsible and trustworthy in every aspect of his life, including his finances. He also knows that he must live within his means in order to show that he is financially responsible. He can no longer spend recklessly and without concern like he once did. Applicant has modified his spending habits, and set up a financial budget that he is following in order to be financially responsible.

In addition, Applicant has a new girlfriend who works for the same company he works for, and she holds a security clearance. He stated that she is financially

responsible and that she has been helpful to him in demonstrating financial responsibility. They now share the household expenses and live within their means. Applicant has made a good faith effort to resolve his delinquent debts and they are close to all being paid off. He has demonstrated responsibility and good judgment, reliability, and trustworthiness. Mitigating conditions 20(a), 20(b), and 20(d) are applicable.

There is sufficient evidence in the record to show that Applicant's delinquent debts have been or are being resolved. Overall, Applicant has shown significant progress towards resolving his debts. There is also 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 must continue to follow through with his commitment to show financial responsibility in the future, or he will once again be in jeopardy of losing his security clearance and access to 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 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.g.	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