



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



In the matter of:)	
)	
)	ISCR Case No. 23-01032
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

12/13/2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 20, 2022, Applicant submitted a security clearance application (e-QIP). On June 8, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 June 15, 2023. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On July 25, 2023, Department Counsel submitted the Government’s written case. A

complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by him on August 10, 2023. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 5, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 5.

Findings of Fact

Applicant is 43 years old, and unmarried with one child. He has an Associate degree. He has no military service. He is employed by a defense contractor as an AUV Operator. 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 incurred eleven delinquent debts owed to creditors on accounts that were charged off, placed for collection, or past due totaling approximately \$ 51,705. In his answer, Applicant admits each of the debts. Credit reports of the Applicant dated October 20, 2022; and March 27, 2023, confirm this indebtedness. (Government Exhibits 4 and 5.)

Applicant stated that in 2016, he was laid off from a job he had for seventeen years. He had difficulty finding stable employment until 2019. He started working and was laid off due to COVID. He was unemployed for about a year. During this time, his bills became delinquent. In August 2019, he began working for his current employer. Since then, there have been no noted interruptions in his employment. In April 2021, he applied for a security clearance which was granted. He stated that he is currently trying to catch up with his delinquent debts now that the economy seems to be getting back to normal. (Government Exhibit 1.) Applicant has provided no information to show that he has done anything to resolve his delinquent debts.

The following delinquent debts are of security concern:

- a. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$4,041. Applicant admits the debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.

- b. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$3,107. Applicant admits the debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.
- c. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$2,353. Applicant admits this debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.
- d. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$1,413. Applicant admits the debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.
- e. A delinquent debt owed to a creditor for an account that was placed for collection the approximate amount of \$1,285. Applicant admits the debt and provided no documentary evidence to show that the debt had been or is being resolved. The debt remains owing.
- f. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$135. Applicant admits the debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.
- g. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$53. Applicant admits the debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.
- h. A delinquent debt owed to a creditor for an account that was past due in the amount of \$2,589, with a total balance of \$19,595. Applicant admits this debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.
- i. A delinquent debt owed to a creditor for an account that was past due in the amount of \$10,848, with a total balance of \$10,848. Applicant admits the debt and provided no documentary evidence to show that the debt has been or is being resolved. The debt remains owing.
- j. A delinquent debt owed to a creditor for an account that was charged off in the approximate amount of \$7,155. Applicant admits the debt and provided no documentary evidence to show that the debt had been or is being resolved. The debt remains owing.
- k. A delinquent debt owed to a creditor for an account that was charged off in the approximate amount of \$1,720. Applicant admits the debt and provided no

documentary evidence to show that the debt had been or is being resolved. The debt remains owing.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant completed a security clearance application dated September 20, 2022. (Government Exhibit 2.) In response to Section 26, Financial Record Delinquency Involving Routine Accounts Other Than Previously Listed: Have any of the following happened? . . . “In the past seven years have you had bills or debt turned over to a collection agency? . . . In the past seven years, have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?” Applicant answered, “No,” to both questions, and failed to list that he had been delinquent on debts in the past seven years, as noted in Guideline F above. Applicant denied this allegation. Upon review of the security clearance application, Applicant failed to list any indebtedness. Given his significant debt, it can be presumed that he deliberately sought to conceal this information from the Government on the application.

During Applicant’s subject interview in February 2023, the investigator confronted him with the debt by reviewing Applicant’s credit report. At that time, Applicant admitted the debt. (Government Exhibit 3.) In his answer to the SOR, Applicant stated that when he went over the debts with the investigator, he was told that he could make changes on the security clearance questionnaire if he chose to. Applicant did not have any changes that he wanted to make. (Government Exhibit 1.)

Policies

When evaluating an applicant’s suitability for national security eligibility, 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 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 incurred significant delinquent debt that he has not paid. At this time there is insufficient information in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has the financial resources available to resolve his financial obligations. There is no evidence in the record to show that any regular monthly payments of any sort are being made toward his debts. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations 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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (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.

It is noted that Applicant's earlier employment lay-offs have contributed to his excessive indebtedness. However, he has been gainfully employed since August 2019, for the past four years. There is still no evidence to show that he has made any effort to resolve his debts. None of the mitigating conditions apply. This guideline is found against Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant deliberately attempted to conceal his financial history from the government on his security clearance application. There is no excuse for this dishonesty. Deliberately concealing material information from the Government on a security clearance application raises serious questions about one's credibility and trustworthiness. None of the mitigating conditions are applicable. This guideline is found against Applicant.

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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. Applicant was given an opportunity to provide documentation to show that he is resolving his delinquent indebtedness. He failed to submit any documentation to show that he has done anything to resolve his debts. Thus, it can be presumed that he is not addressing the debts in any form or fashion. Furthermore, he was not candid with the Government on his security clearance application concerning his financial history. Applicant did not submit a response to the FORM. Insufficient mitigation has been shown. Accordingly, I conclude Applicant has not mitigated the Financial Considerations, and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a., through 1.k.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	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