



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



In the matter of:)	
)	
)	ISCR Case No. 23-01881
)	
)	
Applicant for Security Clearance)	

Appearances

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

12/14/2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On September 19, 2022, Applicant submitted a security clearance application (e-QIP). On August 31, 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. (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 September 7, 2023, and requested a hearing before an administrative judge. The case was assigned to me on October 10, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on October 12, 2023, and the hearing was convened as scheduled on November 8, 2023. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. Applicant testified on his

own behalf. The record remained open until close of business on November 29, 2023, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 17, 2023.

Findings of Fact

Applicant is 35 years old. He is unmarried with two children. He has a high school diploma. He is employed with a defense contractor as a Security Professional. He is applying for a security clearance in connection with his employment. Applicant began working for his current employer in August 2022.

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 one delinquent debt owed to a bank that was charged off in the amount of \$19,427. Applicant admits the allegation. Credit Reports of Applicant dated October 22, 2022; July 20, 2023; and October 2, 2023, confirm the indebtedness listed in the SOR. (Government Exhibits 3, 4, and 5.)

Applicant stated that he incurred the debt when he financed a new vehicle in November 2017. He defaulted on the loan in about April 2018. The debt remains owing. Besides this debt, Applicant has no history of financial indebtedness. The circumstances as to how Applicant incurred this debt are as follows:

In 2017, Applicant was close to finishing the lease period on a Dodge Charger and had taken it into the dealership for the sole purpose of being serviced. At that time, Applicant had no intentions of purchasing a car. A few months earlier he had become a father, and he thought that it might be nice to get a new and larger vehicle to better accommodate his new child, but it was just a thought. On this day, his impulses took over. Since he was gainfully employed, and had maintained good credit, he was encouraged by the salesman to test drive several vehicles. After doing so, he was convinced that he should purchase a new car. Not long thereafter, he was approved for a new car loan. With no intention of buying a car, he found himself financing a brand new 2018 Dodge Charger. The vehicle cost him a total of approximately \$40,724. The monthly payments were about \$612. At that time, Applicant was making \$12.00 per hour, and working 40 hours a week. Two days later, when reality sank in, after talking with family and friends about the purchase, and after realizing that he should not have purchased such an expensive vehicle, he contacted the dealership and asked if he could return it. They told him that state law did not have a "cooling off" period and that he was stuck with the vehicle. They further explained that if he did not make a payment

on the car, they would repossess it from him. About a month later, Appellant failed to make the payment, and just as the dealer said, they repossessed the car. When the vehicle was repossessed it had been driven less than 1,000 miles. The dealer told the Applicant that after the vehicle was sold, he would be responsible for the deficiency owed on the loan. The amount owed by the Applicant to the bank after the sale of the vehicle is \$19,427.

Applicant stated that in August 2021, he was notified by the creditor or their representative that he needed to respond to a Court Summons concerning the debt owed to the bank. Applicant remembers responding to the Summons on-line sometime in 2021. He stated that since then he has heard nothing further.

Applicant testified that the decision to purchase the car in the first place was a misjudgment on his part. He could not afford to keep up with the payments. To this day, Applicant has not made any payments toward resolving the debt. He stated that he does not have the money to do so. In an attempt to give Applicant the benefit of the doubt, with the exception of this delinquent debt, considering the Applicant's otherwise good financial history, the record was left open to allow Applicant the opportunity to learn more about the debt, and to determine what if anything he chose to do about it. Applicant did contact the law firm that is handling the debt collection. They have provided him with a 45-day offer for a full and final settlement of the account in the amount of \$15,542.04. (Applicant's Post-Hearing Exhibit A.) Applicant provided no further information.

A letter of recommendation from the defense contractor's Security Site Focal, who works closely with Applicant, indicates that Applicant is dependable, professional, and trustworthy. He is honest and transparent and displays high ethical principles. Regardless of the challenges or tight deadlines that may arise, Applicant can always be counted on to deliver high quality results. He is considered to be a true gem, with the highest level of integrity, who always meets or exceeds his job expectations. Applicant's skills and capabilities, as well as his character and dedication to the job are described as exemplary. His attention to detail and his commitment to continuous improvement are evident in every task he undertakes. (Applicant's Exhibit A.)

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 remains excessively indebted to the one creditor listed in the SOR. Other than contacting the law firm in charge of the debt collection and providing a copy of their settlement offer, Applicant has done nothing to show that he is or has been working to resolve the debt. He has made no payments toward resolving it. 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 has provided no evidence in mitigation to show that he is doing anything to resolve the debt. Under the particular circumstances here, Applicant has failed to establish that he has acted reasonably or responsibly with respect to his delinquent debt. As it stands, Applicant has done nothing to resolve his debt. In fact, he has not even made one payment. Even with the record left open for several weeks following the hearing to allow him the opportunity to contact the creditor and address the debt in some fashion, he did nothing more than to show that he was offered a settlement. He did not indicate whether he accepted the settlement or whether he rejected it. In any event, he has not demonstrated that his financial problems have been addressed or are under control, and that future financial problems are unlikely. None of the mitigating conditions are applicable.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant failed to provide any evidence to show that he is or has been making payments toward resolving his excessive delinquent debt. Thus, 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

Subparagraph 1.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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge