



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



In the matter of:)	
)	
)	ISCR Case No. 22-01375
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

March 5, 2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 16, 2018, and December 23, 2020, Applicant submitted security clearance applications (e-QIPS). On August 17, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications 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 August 25, 2023, and requested a hearing before an administrative judge. The case was assigned to me on October 23, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on November 6, 2023, and the hearing was convened as scheduled on January 17, 2024. The

Government offered fourteen exhibits, referred to as Government Exhibits 1 through 14, which were admitted without objection. The Applicant offered five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 26, 2024.

Findings of Fact

Applicant is 59 years old. He is on his third marriage. He has a Master's degree in Business Administration. He holds the position of Facility Lead/Senior Manager. 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 eight allegations consisting of a number of delinquent debts totaling in excess of \$88,415, which includes collections and charge-off accounts. It is also alleged that Applicant filed for Chapter 13 Bankruptcy; and was terminated from his employment with a defense contractor for misuse of company funds. Applicant denies each of the allegations with explanations. Credit reports of the Applicant dated September 25, 2018; January 29, 2021; February 4, 2021; November 23, 2021; March 3, 2022; October 11, 2022; and October 16, 2023, confirms this indebtedness. (Government Exhibits 5, 6, 7, 8, 9, 10, and 11.) Applicant was hired by defense contractor A, his current employer in November 2020.

Applicant has been investing in real estate for the past twenty years. He and his ex-wife, who are still good friends, have partnered on the purchase of multiple properties in the past. Applicant presently owns several properties with her. It is important for him to maintain a good credit rating in order to obtain good loan interest rates.

In 2014, in an effort to improve his credit rating, Applicant partnered with a woman he thought was operating a credit repair company. Applicant stated that from 2014 to 2018, he was involved in what he found to be a "ponzi scheme" that instead of improving his credit, ultimately ruined his credit. He explained that in 2014, he met a woman at a sporting event who ran a wealth management company that did credit repair for their clients. She and Applicant became good friends and about six months later, Applicant became her business partner in her firm. Applicant listened to her marketing pitches, met some of her associates, and believed that she was authentic. She and Applicant agreed that his role was to be the face of the company, and she would operate the business. At the time, Applicant had a 712 credit rating and hoped to bring it up to 800 in order to obtain better real estate loans and other financial

opportunities. Applicant trusted his partner. Applicant registered with the State as the CEO, the CFO, and the Secretary of their company. Applicant also provided her with all of his personal information, including his address and social security number. She used Applicant's credit to open up fictitious accounts under his name. The agreement they had was that once the business got off the ground, she would pay the Applicant a certain number of dividends each month. Applicant claims that he never received any profit from the business, however he does admit that she paid off one of his delinquent accounts. Somehow, with the credit she opened in his name, she gave him money to pay his bills from time to time. She claimed that she was building Applicant's credit line with the accounts that she opened. She was supposed to pay a windfall to the Applicant at some point. But, he never received it. At some point, during their partner relationship Applicant realized that the business was a scam or "ponzi scheme". He admits that towards the end of their partnership, his business partner started paying off some of his debt, but the damage had already been done. (Tr. p. 105.) In June 2021, Applicant filed a police report and turned in his partner for scamming him. (Applicant's Exhibit C.) Applicant stated that the police told him that they located his partner, and that they were prosecuting her. Applicant stated that in total, she ran up about \$130,000 worth of debt in his name. (Tr. p. 65.) He believes that his partner is in jail and he was left with the debt. (Tr. p. 68.)

Applicant stated that he never received any bills from any of the creditors for accounts that she opened in his name. He acknowledges that in 2018, he saw a document that showed that he had delinquent debt, but he thought it was debt he had previous to meeting her. (Tr. pp. 63 – 68.)

Applicant worked for defense contractor B from 1984 to 2016. (Tr. p. 49.) while at work, Applicant heard one of the subcontractors discussing that he could get a discount on the purchase of certain appliances. It just so happened that Applicant was looking to purchase a washer, dryer, and refrigerator, for his daughter who was moving out. Applicant took advantage of the offer and ordered the appliances. They were subsequently delivered to Applicant's home, but never paid for. Applicant stated that it was about this time that he was sick and missed work for several days. He had planned to pay for the appliances when he got back to work. When Applicant returned to work, his supervisor confronted him about the situation that a purchase for appliances had been billed to the company. Applicant told him that he did not know how that happened, but that he was going to straighten it out. Applicant stated that he went to the bank to get the money to satisfy the debt, but it was too late. In June 2016, Applicant was terminated from his employment for misuse of company funds. (Government Exhibit 4, and Tr. 135 - 137.) In 2016, the defense contractor obtained a judgment against the Applicant for this misconduct in the amount of \$8,280. (Tr. p. 140.)

Following his employment termination, Applicant was unemployed from 2016 to 2018. While unemployed, and still associating with his business partner in the ponzi scheme, he purchased a Porshe in August 2016. In March 2017, he leased a new Escalade and traded in his 2014 Escalade. He traveled with his business partner to Fiji in October 2017; Jamaica in April 2017; and Aruba in April 2018. (Tr. p. 74-75.) Applicant stated that by this time, he knew that his partner had opened up accounts in

his name, he knew that the accounts were delinquent, and that he had not received any money from her. He stated that he still traveled internationally with her because he wanted to meet some of the other individuals she had done business with. (Tr. p. 75.) Applicant testified that before he started working with her, he already had about \$80,000 in debt.

Applicant stated that he consulted an attorney to determine what would be in his best interest on how to address his excessive delinquent indebtedness. Applicant was advised to file for Chapter 13 Bankruptcy which he filed in April 2020. At some later date he spoke to another attorney in the firm who advised him to stop the Chapter 13 Bankruptcy, since he would have to pay back the money. (Applicant's Exhibit A.) Applicant stated that he sold his home and used \$60,000 in profits to negotiate settlements on some of his outstanding debts. Applicant currently earns about \$180,000 annually. He also receives a pension from defense contractor B in the amount of \$1,500 monthly. (Tr. p. 47.)

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

1.a. Applicant filed for Chapter 13 Bankruptcy in about April 2020. The Bankruptcy was dismissed as described above. (Government Exhibit 13.)

1.b. Applicant is indebted to CREDITOR A for an account that was charged off in the amount of \$18,244. Applicant claims that he had two accounts with PEN FED and that this account is not the one he opened. He claims that this account was opened in his name to improve his credit by his business partner as part of the business scheme. However, during Applicant's personal subject interview in 2021, he told the investigator that he opened these accounts and that he used the money to pay for living expenses. (Government Exhibit 3, 5 through 11, and Tr. p. 80.) The debt remains owing.

1.c. Applicant is indebted to CREDITOR B for an account that was charged off in the amount of \$7,602. Applicant claims that the account was opened in his name to improve his credit by his business partner as part of the business scheme. (Government Exhibits 5 through 11, and Tr. p. 82.) The debt remains owing.

1.d. Applicant is indebted to CREDITOR B for another account that was placed for collection in the amount of \$4,913. Applicant claims that this account was opened in his name to improve his credit by his business partner as part of the business scheme. (Government Exhibits 5 through 11, and Tr. p. 83.) The debt remains owing.

1.e. Applicant is indebted to CREDITOR C for an account that was charged off in the amount of \$23,751. Applicant claims that this account was opened in his name to improve his credit by his business partner as part of the business scheme. (Government Exhibits 5 through 11, and Tr. p. 83.) The debt remains owing.

1.f. Applicant is indebted to CREDITOR D for an account that was placed for collection in the amount of \$13,548. Applicant claims that this account was opened in

his name to improve his credit by his business partner as part of the business scheme. (Government Exhibits 5 through 11, and Tr. p. 83-84.) The debt remains owing.

1.g. Applicant is indebted to CREDITOR E for an account that was charged off in the amount of \$20,357. Applicant claims that this account was opened in his name to improve his credit by his business partner as part of the business scheme. (Government Exhibits 5 through 11, and Tr. p. 84.) The debt remains owing.

1.h. In March 2016, Applicant ordered appliances for personal use from a subcontractor for defense contractor B. The appliances were billed to defense contractor B when Applicant failed to pay for them. Applicant was subsequently terminated from his employment for misuse of company funds. (Government Exhibit 4.)

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant incurred excessive delinquent debt that he has not paid. His actions or inactions both demonstrate a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise th 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant contends that the debts listed in the SOR are not his responsibility since he did not open them but were opened in his name as part of a business scheme causing them to be delinquently indebted. A close analysis of this situation reveals that Applicant gave his partner permission to open the accounts. He hired her to help him improve his credit rating. He provided her with his personal information, he knew what she was doing, and he even partnered with her in this business venture. Applicant cannot now say that they are not his debts. He knew or should have known that if it sounds too good to be true, it is too good to be true. Applicant's partner was a fraud, and so was he. As a business partner, he allowed her to use his credit to create this "ponzi scheme". Soon after meeting her and joining her company, Applicant realized that his debts were not being paid on time and that they were increasing, but he did nothing. Instead of getting out of the business, he continued to do business with her and even traveled with her internationally. As he described it, "it was like a bribery, or the carrot that she had hanging over my head," and he bit it. (Tr. pp. 74 - 75.) During their four-year business partnership, Applicant allowed her to use his name to open up fictitious accounts, knowing that his bills were not being paid and his credit was being ruined. He failed to show maturity, good judgment, or trustworthiness. He remains indebted to each of the creditors listed in the SOR.

Furthermore, Applicant ordered appliances from a subcontractor of his employer in order to get a discount. He did not pay for the appliances and the bill went to his employer. This is against company policy, rules, and regulations, and Applicant knew or should have known better than this. As a result of this misconduct, Applicant lost his job and his marriage. Applicant's pattern of financial irresponsibility casts serious doubts on his reliability, trustworthiness, or good judgment. Applicant has made a number of poor financial decisions that have negatively impacted his life. He needs more time to show the Government that he can reset and work hard to resolve his financial delinquencies with regular systematic payments and consistency and avoid incurring any further unnecessary indebtedness. None of the mitigating conditions are applicable.

There is insufficient evidence in the record to show that Applicant's delinquent debts have been resolved. Applicant has not resolved his debts. He still owes a significant amount of money to his creditors and has not made it a priority to resolve them. There is insufficient 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. In the event that Applicant follows through with his commitment to show financial responsibility, sometime in the future he may be found to be sufficiently reliable to properly protect and access 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 not 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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.h	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge