



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



In the matter of:)
)
) ISCR Case No. 23-01739
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: *Pro se*

05/07/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 30, 2021, Applicant submitted a security clearance application (e-QIP). On September 19, 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 October 2, 2023, and requested a hearing before an administrative judge. The case was assigned to me on January 4, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on February 14, 2024, and the hearing was convened as scheduled on March 4, 2024. The Government

offered nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. Applicant offered six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. Applicant called one witness, and he testified on his own behalf. The record remained open following the hearing, until close of business on March 25, 2024, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, admitted into evidence as Applicant's Post-Hearing Exhibit A, without objection. DOHA received the final transcript of the hearing (Tr.) on March 14, 2024.

Findings of Fact

Applicant is 45 years old. He is divorced and has three children. He has a high school diploma and some college. He holds the position of Mac Technician for the U.S. Navy. 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 six delinquent debts owed to creditors for collection or charged off accounts totaling approximately \$27,365. He is also indebted to the Federal Government for tax years 2016 and 2017, totaling approximately \$16,561. In his answer, Applicant admits each of the allegations set forth in the SOR, except 1.f., which he claims has been paid. Credit reports of the Applicant dated December 25, 2021; August 23, 2022; February 7, 2023; and September 15, 2023, confirm the indebtedness listed in the SOR. (Government Exhibits 5, 6, 7, and 8.)

Applicant began working for his current employer in February 2021. This is his first time applying for a security clearance.

Applicant and his wife were married in 2015. They separated in 2020, and they divorced in November 2023. Applicant has two children from the marriage, and one with his current girlfriend. He and his ex-wife have equal custody of their two children. They split their assets equally at the time of the divorce, so he was not ordered to pay any alimony nor does he pay child support. (Tr. pp. 45 – 46.)

Applicant believes that his financial problems were caused by several factors. In January 2019, he underwent knee surgery. In 2020, he was unemployed for several months, from July 2020 to September 2020, due to Covid. In 2020, he was separated from his wife and pending divorce. When he and his wife separated, he moved out of the family house and in with his mother. He continued to pay the bills for the family household and to support his wife and children. (Tr. p. 47.) He admits that he was not

good at keeping track of his finances. Applicant acknowledges that he needs help with his finances and that he has not been as responsible as he should have.

In January 2023, Applicant asked his mother to help him get his finances in order. She did her best to investigate the debts to find out whether he owed them. The job was tedious and since some creditors had sold off the debt to others it was a difficult task. She also worked on creditors that were not listed in the SOR. Applicant recently realized that he still needs professional help. He testified that he desires to be financially responsible and to be a good role model for his children. Last week, he contacted a financial counselor through his credit union or bank and is expecting to receive an appointment this week to determine the best course of action to resolve his debts. He plans to discuss his indebtedness and how best to resolve his remaining debts. He also wants to set up a budget for basic living necessities and a saving account to pay any debt in lump sum instead of payment plans. (Tr. p. 98-100.)

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

1.a. He is indebted to a creditor for a car loan account that was charged off in the approximate amount of \$17,909. Applicant explained that he obtained a loan to purchase a car. He started out making his monthly payments. In 2020 the car was repossessed. Applicant could not afford to continue to make the car payments during the divorce. He had initially thought that once the house was sold, he could pay the debt off. However, he was not able to do that. There is a question about what he currently owes the creditor. He originally thought he owed \$13,019. He then stated that he reached an oral settlement of \$8,000 to resolve the debt, and the creditor agreed to receive monthly payments of \$75 monthly. Since March 2023, Applicant has had electronic payments of \$75 monthly being paid on the 15th of each month going towards resolving the debt. (Tr. pp. 50-54.) Applicant's Post-Hearing Exhibit A indicates that on January 27, 2023, Applicant agreed to pay \$75 monthly toward the outstanding principal of \$9,989.99. Payments have been made in accordance with the agreement. A lump sum offer to settle the account is currently in the works.

1.b. He is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$6,161. Applicant stated that this debt is for his knee surgery. Although he had medical insurance, it only paid for half of the \$12,000 bill. Applicant's portion of the bill was about \$6,000 at the time. Since then, interest and penalties have slightly increased the amount owed. Applicant has not yet paid the debt. He stated that he plans on discussing this with his financial counselor to determine how best to resolve it. (Tr. pp. 60-61.) Applicant's Post Hearing Exhibit A indicates that Applicant made a payment of \$112.61 on March 23, 2024. He also requested a possible settlement offer.

1.c. He is indebted to a bank for a delinquent credit card account that was charged off in the approximate amount of \$1,270. Applicant believes that he simply failed to pay this bill. He admitted that he needed to be more responsible in handling his finances and he now realizes it. (Tr. pp. 68-69.) He has contacted the creditor and they reached a

settlement of \$508.30. Applicant paid the debt off in full the day of the hearing. (Tr. p. 70, and Applicant's Post-Hearing Exhibit A.)

1.d. He is indebted to a bank for a delinquent credit card account that was placed for collection in the approximate amount of \$1,028. Applicant has been in contact with the creditor and on April 17, 2023, he made one payment of \$42.84. He currently owes \$942.66 on the account. Applicant stated that he plans on discussing this debt with his financial counselor to determine how best to resolve the remaining debt. (Tr. pp. 73-74.) Applicant stated that the debt was paid in full on April 18, 2023. (Applicant's Post-Hearing Exhibit A.)

1.e. He is indebted to a bank for a delinquent credit card account placed for collection the approximate amount of \$626. Applicant is planning on disputing this debt with the credit reporting agencies as he does not believe that he still owes this debt. He believes that the debt has fallen off of his credit report. (Tr. p. 75 - 77.) The original collection agency has changed names and the account has been sold several times. Applicant recently requested proof of the debt. (Applicant's Post-Hearing Exhibit A.)

1.f. He is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$371. Applicant stated that this debt is for the anesthesiologist related to his knee surgery. He stated that he paid the debt in full in February 2023. (Applicant's Exhibit C, Applicant's Post-Hearing Exhibit A, and Tr. p. 78.)

1.g. He owes \$15,195 in delinquent taxes to the Federal Government for tax year 2019. Applicant stated that he did not know he owed \$15,000 in back taxes to the IRS until he received the SOR. He does not know how or why he owes these back taxes. He filed his income tax returns for 2019 but he believes that they may have been late. He contacted a tax accountant and they advised him that the amount of the taxes do not match up with what his earnings were for that year. They discussed the possibility of refiling his return, but Applicant did not follow through with that. Applicant blames himself on not making the time or being disciplined enough to get this matter resolved. (Tr. pp. 86-87.) Applicant recently stated that he is in the process of making payment arrangements. He currently owes \$16,916.27 including penalties and interest. (Applicant's Post-Hearing Exhibit A.)

1.h. He owes \$1,366 in delinquent taxes to the Federal Government for tax year 2016. Applicant believes that this debt may have been paid through refunds for other tax years that he did not receive because they were applied to pay this debt. He does not know for sure, but he believes he does not owe it. Applicant now states that the account is paid, except for the interest of \$61.42 which he plans to pay next week. (Applicant's Post-Hearing Exhibit A.)

Applicant states that he is now current with all of his income tax filings. He currently does not have a financial budget, but he plans to develop one when he meets with his financial counselor later this week.

Applicant submitted a Financial Spreadsheet showing his debts and payments. (Applicant's Exhibit A.)

Appellant's mother testified that because of her son's work schedule and his commitment to his children, his free time is limited. Since January of last year, she has been involved in trying to help her son get better organized and understand the importance of being responsible with the handling his delinquent debts. She has been in contact with each of his creditors to determine the status of the debts, and how best they can be resolved. (Tr. pp. 102-117.)

Letters of recommendation from the main lead on base and another professional colleague attest to Applicant's exemplary performance on the job and his outstanding character. They both appreciate Applicant's technical expertise involving the planning, implementation, installation and completion of the Navy projects, for which he is assigned. Applicant is described as an individual who has consistently demonstrated integrity, honesty, and high moral character. He always strives to do what is right even in very challenging situations. He is known for his kindness and willingness to help others. He goes above and beyond to support and uplift those around him, creating a positive and inclusive environment. Applicant is considered to be a great addition to the facilities and construction team. (Applicant's Exhibits E and F.)

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
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial hardship brought on by his knee surgery, a period of unemployment, and expenses related to a separation and divorce. He also failed to pay sufficient Federal taxes for tax years 2016 and 2019 and remains indebted. 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;
- (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 has recently directed his focus at resolving his delinquent debts. He now realizes the importance of being responsible and trustworthy in every aspect of his life, including his finances. He has resolved two of his delinquent debts and is planning to resolve his other debts in the near future. Applicant is planning to meet with a financial counselor soon to determine how to best address his remaining delinquent

debts. He now realizes the importance of establishing a budget and following it in order to be financially responsible. Applicant has not yet addressed his back taxes owed to the Federal Government for tax years 2016 and 2019 totaling in excess of \$16,000, which is significant. Applicant has not yet demonstrated sufficient responsibility, good judgment, reliability, and trustworthiness to be eligible to access classified information at this time. Mitigating conditions 20(a), 20(b), and 20(d) are applicable, but do not establish full mitigation.

There is insufficient evidence in the record to show that Applicant's delinquent debts have or are being resolved. He still owes at least \$16,000 in back taxes that have not been addressed at all. 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. Applicant must establish a plan to pay his delinquent debt, follow that plan, and learn to be fiscally responsible going forward. He must also follow through with his commitment to show financial responsibility in the future. At that point, he may be found to be eligible for access to classified information. But, not at this time.

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.b., 1.d., 1.e., 1.g., and 1.h.	AGAINST Applicant
Subparagraphs 1.a., 1.c., and 1.f.	FOR 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