



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



In the matter of:)
)
) ISCR Case No. 23-02202
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

05/07/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 29, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 December 18, 2023, and requested a hearing before an administrative judge. The case was assigned to me on February 6, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2024, and the hearing was convened as scheduled on March 8, 2024. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which

were admitted without objection. The Applicant offered no exhibits, however he did testify on his behalf. The record remained open until close of business on March 22, 2022, to allow the Applicant the opportunity to submit supporting documentation. Applicant submitted two documents, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted into evidence. DOHA received the transcript of the hearing (Tr.) on March 18, 2024.

Findings of Fact

Applicant is 34 years old. He is not married but resides with his girlfriend. He has two biological children and one step-child. He has a high school diploma. He is currently applying for a position with a defense contractor as an Aircraft Structures Mechanic, Level 1. A security clearance is required in connection with this 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 eight creditors which include collections and charge-off accounts totaling approximately \$72,383. In his answer, Applicant admits allegation 1.b., and he denies the rest. Credit reports of the Applicant dated December 29, 2022; August 14, 2023; and January 23, 2024, confirm this indebtedness. (Government Exhibits 4, 5, and 6.)

In October 2022, Applicant was laid off from his job due to lack of work. He currently works part-time doing landscape and irrigation. (Tr. p. 7.) It is his understanding that if he is granted a security clearance he will be hired by the sponsoring defense contractor. His girlfriend is an employee with the defense contractor.

Applicant stated that in August 2021, he was involved in three accidents within a four month period. He testified that the first accident occurred about a month after he purchased his motorcycle when it was hit by a car. The second and third accidents occurred while he was driving a car. He stated that he was found not at fault in any of the accidents. (Tr. p. 29.) Applicant stated that his motorcycle was insured at the time of the accident, as it is a requirement in order to drive it off of the sales lot. (Tr. p. 41.)

Applicant hired the same attorney to represent him in each of the three accidents. He testified that he assumed that his medical bills from the accidents were being taken care of by and through his attorney and insurance proceeds. He stated that he has not talked with his attorney for about two weeks, but that she was supposed to obtain some documents for him to present at this hearing. (Tr. p. 37.) He stated that he believed his medical bills were already paid since his attorney has received her

payment for her services from the motorcycle accident. (Tr. p. 31-32.) However, in April 2023, during his personal subject interview with the investigator, Applicant was made aware of the collection accounts and delinquent medical bills that were on his credit reports. Applicant told the investigator at that time that he did not have the money to repay the debts. (Government Exhibit 3.) The debts remain outstanding.

Applicant explained that as a result of the motorcycle accident, his knee was fractured and he has suffered some emotional damage, but he is alive. (Tr. p. 32.) After he paid his lawyer, he received a check for \$6,000 to replace his motorcycle. (Tr. p. 33.)

Applicant claims that he also had insurance on the car at the time he was involved in the car accidents. (Tr. p. 41.) Applicant's credit reports show that the debts listed in the SOR remain owing. (Tr. pp. 40-42.)

The following delinquent debts became delinquent and are of security concern:

1.a. A delinquent debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$24,032. Applicant explained that these were medical bills he incurred in the motorcycle accident. (Tr. p. 30.) Applicant's credit reports show that the debt remains owing. (Government Exhibits 4, 5, and 6.)

1.b. A delinquent debt owed to a creditor for an account was charged off in the approximate amount of \$23,946. This was for Applicant's motorcycle that was being financed when it was totaled in the accident. (See, Tr. pp. 33-34, and Collision Report Information Card and related documents, Applicant's Post-Hearing Exhibit A.) Applicant's credit reports show that the debt remains owing. (Government Exhibits 4, 5, and 6.)

1.c. A delinquent debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$1,619. This medical bill was incurred in one of the car accidents Applicant was involved in. Applicant explained that while driving his car, he was struck and t-boned by another vehicle. Applicant stated that he has received no monetary benefit as a result of the second car accident. (Tr. p. 36.) Applicant's credit reports show that the debt remains owing. (Government Exhibits 4, 5, and 6.)

1.d. A delinquent debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$625. This medical bill was incurred in either Applicant's motorcycle or car accidents. Applicant's credit reports show that the debt remains owing. (Government Exhibits 4, 5, and 6.)

1.e. A delinquent debt owed to a creditor for an account was charged off in the approximate amount of \$21,516. This was Applicant's car he was financing when it was totaled in the accident. (See, Accident Report, Applicant's Post-Hearing Exhibit B.) Applicant was the driver in the car when he was hit by another vehicle. He suffered only minor injuries. He stated that because he had insurance on the car at

the time of the accident, it should cover the remaining balance owed on the car loan. (Tr. p. 40.) Applicant's credit reports show that the debt remains owing. (Government Exhibit 4, 5, and 6.)

1.f. A delinquent debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$345. This debt is related to one of the vehicle accidents. Applicant's credit reports show that the debt remains owing. (Government Exhibits 4, 5, and 6.)

1.g. A delinquent debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$241. This debt is related to one of the vehicle accidents. Applicant's credit reports show that the debt remains owing. (Government Exhibits 4, 5, and 6.)

1.h. A delinquent debt owed to a creditor for a medical account was placed for collection in the approximate amount of \$61. This debt is related to one of the vehicle accidents. Applicant's credit reports show that the debt remains owing. (Government Exhibits 4, 5, and 6.)

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 December 2, 2022. (Government Exhibit 1.) In response to Section 26, regarding his Financial Record, Applicant was asked if any of the following happened? . . . "In the last seven years have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? In the last seven years have you defaulted of any type of loan? In the last seven years have you had bills or debts turned over to a collection agency? . . . In the last seven years have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? In the last seven years have you been over 120 days delinquent on any debt not previously entered?" Applicant answered, "No." Applicant failed to disclose the delinquent debts set forth above in subparagraphs 1.a., through 1.h.

Applicant testified that he was under the impression, whether right or wrong, that his medical bills and other related expenses from the accidents were covered and paid through his Attorney with his insurance policy. (Tr. p. 30.) He stated that he did not know that they were not paid. He stated that he plans to contact his attorney regarding the matter. He also stated that he did not deliberately attempt to conceal any of his delinquent debts from the Government in response to his security clearance application. However, during his personal subject interview in April 2023, he was made aware of the delinquent medical bills on his credit reports, and he told the investigator that he did not have the money to repay them. (Government Exhibit 2.)

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. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has incurred significant delinquent debt that he has not paid. 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 handle his financial obligations. There has been no action taken to resolve his delinquent debts. In fact, all of the debts listed in the SOR remain outstanding. 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.

There were circumstances beyond the Applicant's control, namely three vehicle accidents in 2021, followed by a period of unemployment which contributed to Applicant's financial indebtedness. Applicant should have shown more responsibility to find out if his delinquent debts related to his accidents had been paid through his insurance companies. He did nothing. Furthermore, he has failed to provide any documentation to support his testimony. 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;

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

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant stated that he did not list his delinquent debts because he thought they had been paid through his attorney. Although Applicant's conduct does not rise to the level of being a deliberate liar or deceitful, it does show that he demonstrates poor judgment. Applicant should have made the effort to find out if his delinquent debts related to his three vehicle accidents in 2021 had been or should have been paid. He was not careful or responsible in providing accurate information to the Government when he answered the questions on the application. His carelessness shows immaturity and irresponsibility. There is also evidence to show that the investigator told him during his personal interview about the delinquent medical bills, and Applicant said that he did not have the money to pay them. Since then, he has done nothing to address them. In either case, none of the mitigating conditions are applicable here, and Applicant does not meet the eligibility requirement to access classified information. However, since Applicant did not deliberately provide false information to the Government, or deliberately conceal material information from the Government, only by a technicality is this guideline found for the 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 has not addressed his financial delinquencies, and he failed to show good judgment when he answered questions on the security clearance application about his financial history. Applicant failed to provide sufficient evidence to mitigate concerns pertaining to his indebtedness. Accordingly, I conclude Applicant has not mitigated the Financial Considerations security concern. The Personal Conduct security concern is found for Applicant.

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.h.	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge