



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



In the matter of:)
)
) ISCR Case No. 23-02625
)
)
 Applicant for Security Clearance)

Appearances

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

07/16/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On December 26, 2023, 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 January 9, 2024; and February 7, 2024, and requested a hearing before an administrative judge. The case was assigned to me on February 29, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 7, 2024, and the hearing was convened as scheduled on April 11, 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. DOHA received the transcript of the hearing (Tr.) on April 23, 2024.

Findings of Fact

Applicant is 46 years old. He is married with one child, a daughter. He has a high school diploma and military training. He is employed by a defense contractor as a Senior Tool Maker. 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 is indebted to twelve separate creditors for delinquent accounts that were either charged off, placed for collection, or past due, totaling approximately \$32,000. It also alleged that he falsified his security clearance application concerning his police record. In his answer, Applicant admits each of the allegations under this guideline. Credit reports of the Applicant dated April 4, 2023; October 4, 2023; and February 23, 2024, confirm his delinquent indebtedness. (Government Exhibits 4, 5, and 6.)

After high school, Applicant enlisted in the United States Marine Corps and served on active duty from 1996 through 2000. Applicant was separated from the military for misconduct, with an Other Than Honorable Discharge. Applicant explained that in 1998, he tested positive for Methamphetamine on a drug urinalysis conducted by the military. He was convicted under Summary Court Martial for Narcotics (Methamphetamine). He was sentenced to one half-month of pay forfeited, his rank was reduced to Private, and he did 30 days in the Brig.

Applicant has been married to his wife for twenty-six years. He stated that he has experienced two periods of extreme hardship that caused him to fall behind on his financial obligations. In 2008, he lost his job and had no source of income when the housing market crashed and the owner of the housing surveying company retired. He was out of work for a year and a half. Then in 2015/2016, he had to relocate to another state and the expense of the move was very costly and more than he could afford. He found himself living beyond his means for about three years. (Tr. pp. 41-43.) This further aggravated his financial situation.

In October 2019, Applicant began working for his current employer, a defense contractor. Since then, there have been no noted interruptions in his employment. He applied for a security clearance in March 2023.

Applicant is currently working full time and bringing home about \$1,300 a week. His wife does not work. After paying his regular monthly expenses he has no money left to pay his delinquent debts. (Tr. p. 40.) He stated that he has tried to get a consolidation loan or borrow money from personal sources, but no one has the means to help. (Response to SOR.) There is insufficient evidence in the record to show that Applicant has made any effort to pay or resolve the accounts alleged in the SOR. All of the debts listed in the SOR continue to appear on Applicant's credit reports.

The following delinquent debts are of security concern:

a. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$2,817. This was for a car that was repossessed. Applicant's credit report indicates that the debt remains owing. (Tr. p. 26, and Government Ex. 6.) Accordingly, this allegation is found against Applicant.

b. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$1,943. Credit reports of Applicant indicate that the debt remains owing. (Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against Applicant.

c. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$1,717. This was a department store credit card. Applicant's credit report indicates that the debt remains owing. (Tr. p. 28, and Government Exhibit 6.) Accordingly, this allegation is found against Applicant.

d. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$1,607. This was a department store credit card. Applicant's credit report indicates that the debt remains owing. (Tr. p. 28, and Government Exhibit 6.) Accordingly, this allegation is found against Applicant.

e. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$1,415. This was a department store credit card. Applicant's credit report indicates that the debt remains owing. (Tr. p. 29, and Government Exhibit 6.) Accordingly, this allegation is found against Applicant.

f. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$807. Credit reports of Applicant indicate that the debt remains owing. (Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against Applicant.

g. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$5,628. This was for a car that Applicant voluntarily gave back. Credit reports of the Applicant indicate that the debt remains owing. (Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against Applicant.

h. A delinquent debt is owed to a creditor in the approximate amount of \$8,912, for the balance due on a vehicle that was repossessed. Credit reports of the Applicant indicate that the debt remains owing. (Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against Applicant.

i. A delinquent debt is owed to a creditor in the amount of \$125 on an account with a total balance of \$716. Credit reports of the Applicant indicate that the debt remains owing. (Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against the Applicant.

j. A delinquent debt is owed to a creditor in the amount of \$50 on an account with a total loan balance of \$234. Credit reports of the Applicant indicate that the debt remains owing. (Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against Applicant.

k. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$5,793. This was a credit card. Credit reports of the Applicant indicate that the debt remains owing. (Tr. pp. 35-36, and Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against the Applicant.

l. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$386. This was a utility bill that Applicant thought he had paid. Credit reports of the Applicant indicate that the debt remains owing. (Government Exhibits 4, 5, and 6.) Accordingly, this allegation is found against Applicant.

Applicant stated that he plans to pay or otherwise resolve each of his debts sometime in the future. (Tr. p. 26.)

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.

As discussed above, in about January 1998, while serving on active duty in the Marine Corps, Applicant was convicted under Summary Court Marital of a Narcotics (Methamphetamine) charge. As a result, one half month of pay was forfeited, his was reduced in rank to Private, and he was sentenced to 30 days in the Brig.

In January 2001, Applicant was arrested and charged with Driving Under the Influence (DUI). He pled no contest, and was sentenced to 111 hours of community service, alcohol awareness classes, and his Drivers License was suspended for one year. He was also required to pay fines and court fees of \$5,500.

Applicant completed a security clearance application (e-QIP) dated March 20, 2023. In response to “Section 22, Police Record, Other than those offenses already

listed, have you EVER had the following happen to you? . . . Have you EVER been charged with an offense involving alcohol or drugs?” Applicant answered “NO”. This was a false answer. Applicant failed to list his arrest in January 2001, and his Summary Court Martial for Narcotics (Methamphetamine) in January 1998, while serving in the military.

Applicant stated that he did not intentionally omit the two offenses previously noted in response to the question about his police record on his security clearance application. He claims that it was simply an oversight. Applicant explained that he actually filled out the application about eight times, as it was continually getting kicked back because he did not know the information to answer certain questions. (Tr. pp. 47-48.)

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. There is insufficient evidence in the record to conclude why or how it occurred, or whether he is financially stable, or if he can afford his lifestyle, or if he has the financial resources available to handle 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.

The record is void of mitigation. Applicant remains delinquently indebted and presented insufficient evidence to show that he has made any good faith effort to resolve his debts. Although he had some periods of unemployment, which were circumstances beyond his control that contributed to his financial difficulties, he has been working full time, since October 2019, for the past six years, and not one of his delinquent debts has been addressed. He remains excessively indebted. 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 conditions are 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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(e) personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.

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 explained that he had some real difficulties submitting his security clearance application because he did not have adequate responses to some questions. As a result, he had to fill out the application about eight times before it was accepted by the computer. Under the circumstances, it is plausible that he overlooked the particulars of the question concerning his police record and answered the question incorrectly. It is not clear that he was deliberately dishonest. In fact, it seems that he was simply overwhelmed with the process and did his best to answer the questions with what he knew, or what he had in front of him at the time. Applicant did not deliberately falsified his security clearance application in response to the question concerning his police record. Accordingly, Allegation 2.a., is found for Applicant.

Applicant's arrest in January 2001, for DUI, occurred over twenty-three years ago. He has not had any further arrests or encounters with law enforcement. Applicant's poor personal conduct has been mitigated. Allegation 2.b. is found for Applicant.

Applicant's misconduct in January 1998, while serving in the Marine Corps, involved his testing positive on a drug urinalysis for Methamphetamine, occurred over twenty-five years ago. He has no further illegal drug involvement or substance misuse on his record. Applicant's poor personal conduct has been mitigated. Allegation 2.c. is found for 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 submitted no documentary information in mitigation. Accordingly, I conclude Applicant has not mitigated the Financial Considerations security concern. The Personal Conduct security concern has been mitigated.

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.i.	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. through 2.c	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