



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



In the matter of:)	
)	
)	ISCR Case No. 23-02377
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

08/28/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 18, 2022, Applicant submitted a security clearance application (e-QIP). (Item 3.) On November 3, 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 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on December 18, 2023, and December 19, 2023. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on April 16, 2023. Department Counsel also submitted a

corrected SOR dated April 9, 2024. A complete copy of the File of Relevant Material (FORM), containing fourteen Items was received by Applicant on April 22, 2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA assigned the case to me on August 8, 2024. Items 1 through 14 will hereinafter be referred to as Government Exhibits 1 through 14.

Findings of Fact

Applicant is 51 years old. He is married and has an adult daughter. He has no military service. He has a high school diploma. He is employed by a defense contractor as the Director of Field Services and Supply Chain. 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 corrected SOR dated April 9, 2024, alleges a history of financial delinquencies. Applicant is indebted to creditors totaling approximately \$85,000 that include Federal and state back taxes; and delinquent medical accounts that were placed for collection. The SOR also alleges that Applicant failed to timely file his Federal and state income tax returns for tax years 2012 through 2016, and 2019; that he filed for Chapter 7 Bankruptcy in 2005, and his debts were discharged in December 2005; and that his house was foreclosed upon in 2014. (Government Exhibit 2.)

Applicant admits each of the allegations set forth in the SOR. Applicant's credit reports dated April 29, 2022; August 11, 2023; and April 8, 2024, confirm the indebtedness. (Government Exhibit 5, 6, and 7.) For the past twenty-four years, since February 2000, Applicant has been employed full time with his current employer.

Applicant attributes his history of financial delinquencies and hardship to a number of mistakes and poor financial decisions he made and takes responsibility for. The gist of his financial problems stem from overspending. He has admitted to living beyond his means for some time. His excessive spending eventually caught up with him and he is now experiencing the consequences. (Government Exhibit 2.)

The following delinquent debts and other financial conduct set forth in the SOR are of security concern:

1.a. Applicant failed to timely file, as required, Federal and state income tax returns for tax years 2012 through 2016, and 2019. He did not file his 2012 through 2015 income tax returns until December 2018; his 2016 income tax returns until May 2018; and his

2019 income tax returns until August 2021. He explained that he was overwhelmed by the amount of the debt that had accumulated over the years and what he owed. He was scared of what might happen, and so he did not file. He now realizes the mistake. As result, he owes a significant amount of money to the Federal Government. (Government Exhibit 2.)

1.b. Applicant is indebted to the Federal Government for delinquent taxes totaling approximately \$83,309 for tax years 2012, 2013, 2014, 2015, 2016, 2017, and 2018. He owes \$46,936 for tax year 2012, 2013, and 2015 through 2018. He owes \$35,373 for 2014. In May 2019, the Federal Government filed two Federal tax liens against the Applicant in the amounts of \$22,234; and \$8,827. (Government Exhibit 4.) Applicant explained that he has signed over all tax refunds he was to receive for the past several years and has tried to enter into a payment plan with the IRS. They want more money from him than he can afford. He made the payments they requested for a few months before he had to stop because he could not feed his family. Applicant blames the increase in his taxes on the forgiveness of his foreclosure deficiency in 2014. The debt remains owing.

1.c. Applicant was indebted to a state for delinquent taxes in the approximate amount of \$5,394, for tax year 2018. Applicant stated that it was an oversight between himself and his tax accountant concerning the filing of his 2018 state tax returns. (Government Exhibits 2 and 4.) Applicant stated that he thought he had filed these income tax returns but he had not. The SOR did not allege this failure to file state returns for tax year 2018. When he learned of his tax liability, he did not have the money to pay the taxes, but he planned to set up a payment arrangement. When he contacted the tax authorities to do so, he learned that a levy to garnish his wages for the back taxes had already been sent and implemented by his employer. His wages were garnished, and the debt was ultimately settled. He submitted a copy of the Release of Tax Lien. According to the documentation, Applicant owed \$9,560 in delinquent state taxes rather than \$5,394 alleged in the SOR. In any event, the debt has been paid.

1.d. A delinquent debt is owed to a creditor for a medical account #2223603513, that was placed for collection in the approximate amount of \$1,555. Applicant stated that he was unaware that the bill had gone to collections, and he plans to arrange to pay it off. The debt remains owing. (Government Exhibits 2 and 14.)

1.e. A delinquent debt is owed to a creditor for a medical account #2191836490, that was placed for collection in the approximate amount of \$660. Applicant stated that he was unaware that the bill had gone to collections, and he plans to arrange to pay it off. The debt remains owing. (Government Exhibits 2 and 14.)

1.f. A delinquent debt is owed to a creditor for a medical account #2202182052, that was placed for collection in the approximate amount of \$58. Applicant stated that he was unaware that the bill had gone to collections, and he plans to arrange to pay it off. The debt remains owing. (Government Exhibits 2 and 14.)

1.g. A delinquent debt is owed to a creditor for a medical account #2202181739, that was placed for collection in the approximate amount of \$57. Applicant stated that he was unaware that the bill had gone to collections, and he plans to arrange to pay it off. The debt remains owing. (Government Exhibits 2 and 14.)

1.h. Applicant was the mortgagor on an account that was foreclosed upon and sold at auction in 2014. Applicant stated that he was unsuccessful at refinancing his home mortgage, and he did not make payments on the loan for over six months. He tried to short sale the house but was also unsuccessful. He stated that he received foreclosure notices, and he decided to walk away. The house was ultimately foreclosed upon and sold at auction in 2014. Applicant received a Form 1099 from the lender, which is his largest tax debt. (Government Exhibit 9.)

1.i. Applicant filed for Chapter 7 Bankruptcy in September 2005. His debts, including an auto loan for \$24,917, on a 2001 Ford Expedition that was repossessed in July 2005, were discharged in December 2005. (Government Exhibit 10.) Applicant stated that there was no excuse for him being in this situation but for the fact that he had been living beyond his means for some time and the situation caught up with him. (Government Exhibit 2.)

In May 2022, during his security clearance interview with the authorized DoD investigator concerning his financial delinquencies, Applicant stated that he intended to contact all of the creditors mentioned above and arrange a payment plan with them as soon as possible. This was over two years ago, and since then, only one of the debts listed in the SOR has been resolved, and it was paid through garnishment. (Government Exhibit 14.)

During this same interview with the investigator in May 2022, Applicant discussed the fact that he has purchased a number of unaffordable vehicles in the past, including a 2017 Jaguar XE, a 2012 Audi A4, and a 2002 BMW 330 convertible. (Government Exhibit 11.) Since 2012, Applicant has owned at least nine different vehicles. He stated that he regrets purchasing such vehicles and does not intent to purchase anything excessive again. (Government Exhibit 14.) However, his excessive spending has not stopped. In April 2023, Applicant purchased a 2023 Lincoln Aviator. He obtained an auto loan for \$65,000 to make this purchase. The current balance owed on the account is \$57,213. (Government Exhibit 7.)

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. Five are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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 lived beyond his means, spent frivolously, and become delinquently indebted. For a number of years, he has also failed to timely file his Federal and state income tax returns which have caused more indebtedness, due to penalties and interest. Applicant has resolved only one of the delinquent debts listed in the SOR, and it was paid through garnishment. 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; 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 presented no evidence to show that he has made any efforts to mitigate the Government's concerns under Guideline F. He stated that he intended on entering into payment agreements with his creditors, however, he has submitted no documentary evidence to support this claim. All but one of his debts listed in the SOR remain delinquent and owing. There is no track record of payments to show that he has begun and is sticking to a good faith repayment effort. He stated that his poor financial decisions and excessive spending contributed to his financial difficulties. He gives no reasonable excuse for his behavior or why it continues, when he has been employed on a full-time basis since 2000 and has had ample time to resolve his delinquent debts.

After filing for Bankruptcy in 2005, after his house was foreclosed upon in 2014, and after a series of unaffordable vehicle purchases, he recently purchased another luxury vehicle as recently as 2023. There has been no change in his behavior or judgment regarding his poor financial record. Applicant's failure to resolve his debts for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. He has not carried his burden of proof to establish mitigation of the security concerns alleged in the SOR. Accordingly, Applicant does not meet the requirements to access classified information.

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. I conclude Applicant has not mitigated 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d. 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge