



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



In the matter of:)	
)	
)	ISCR Case No. 24-00217
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

09/30/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 20, 2022, Applicant submitted a security clearance application (e-QIP). (Item 3.) On April 10, 2024, 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 May 2, 2024. (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 May 31, 2024. A complete copy of the File of Relevant Material (FORM), containing nine Items was

received by Applicant on June 13, 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 September 18, 2024. Items 1 through 9 will hereinafter be referred to as Government Exhibits 1 through 9.

Findings of Fact

Applicant is 28 years old. He is not married and has no children. He has a high school diploma, and no prior military service. He is employed by a defense contractor as a Test A. 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 alleges that the Applicant failed to file Federal and State tax returns for tax years 2020, and 2021; and that he is indebted to five creditors totaling approximately \$6,084, which include charged off and collection accounts. Applicant admits each of the allegations set forth in the SOR. He now states that he has since filed his Federal and State income tax returns, and that the debt set forth in allegation 1.c. is in good standing. Applicant's credit reports dated February 25, 2016; September 13, 2022; November 22, 2023; and May 29, 2024, confirm the indebtedness, and they do not show that the debt set forth in 1.c. is in good standing. (Government Exhibits 4, 5, 6, and 7.)

Applicant has a history of financial problems. He began his employment with a defense contractor in March 2016. At that time, he first applied for a security clearance. His clearance was denied based upon an adverse default determination for failing to respond to interrogatories.

Applicant stated in his response to interrogatories dated January 31, 2023, his e-QIP dated August 20, 2022, and in his verified Enhanced Subject Interview dated March 19, 2024, that he does not have a good reason for the delinquent debts and failure to file his taxes. He stated that he has just kept brushing it off. He was going through some tough times, and he was convinced that it would never catch up with him. (Government Exhibit 3.) He also stated that he did not have the money to file his taxes and was lazy about it. (Government Exhibit 9.) He stated that he was "super embarrassed" for failing to file his income tax returns. (Government Exhibit 8.)

In his answer to the SOR, Applicant claims that he has since filed his Federal and State income tax returns for tax years 2020 and 2021. (Government Exhibit 2.)

However, there is no documentary evidence in the record to substantiate this claim. (Government Exhibit 8). In his e-QIP dated August 20, 2022, Applicant stated that he had not filed his income taxes for tax year 2022 either. His failure to file his income tax returns for tax year 2022 was not alleged in the SOR. There is some documentation in the record regarding unalleged tax debts concerning tax year 2022. (Government Exhibit 8.)

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

1.c. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$464. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

1.d. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$112. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

1.e. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$557. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

1.f. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$4,796. This was a vehicle that Applicant purchased. He stated that within two months of this purchase, the vehicle malfunctioned related to the suspension and brake lines. He voluntarily stopped making the payments on the loan in order to afford to purchase another vehicle. He had hoped that the debt would fall off of his credit report after seven years. Voluntarily suspended payments to a legitimate debt is unreasonable and shows poor judgement. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

1.g. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$155. Applicant stated that he does not think he should owe \$155 for vehicle insurance that he had for less than two months. In his interrogatories, Applicant claims that he paid the debt. His credit report dated November 22, 2023, shows that Applicant disputed the debt, and it was paid in collection. There is documentary evidence to show that Applicant has resolved the debt. The debt is no longer outstanding. (Government Exhibit 5.)

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. Four 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; 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 failed to file his Federal and State income tax returns for tax years 2020 and 2021 as required by law. He has also incurred delinquent debt that he has not resolved. 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.

Although Applicant claims that he has filed his Federal and States income tax returns for tax years 2020 and 2021, he has failed to provide sufficient documentation to substantiate this claim. Other than disputing and resolving one of his delinquent debts on his credit report for \$155, there is nothing more in the record to demonstrate that he has made any effort to mitigate the Government's concerns under Guideline F. He remains indebted to four of his creditors totaling approximately \$25,763, and has not shown that he is able to meet his current or future financial obligations. Applicant has not carried his burden of proof to establish mitigation of the security concerns alleged in the SOR. Applicant provides no reasonable excuse for his indebtedness or why it still exists when he has been employed on a full-time basis since March 2016, for at least eight years. If he has started to repay any of his creditors, he has submitted no documentary evidence to substantiate this. From the limited evidence presented, his debts appear to remain delinquent and owing. Applicant's inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. None of the mitigation conditions set forth above are applicable here. Accordingly, Applicant does not meet the requirements to access classified information.

An Applicant's failure to comply with Federal and/or State tax laws suggests that he has a "problem with complying with well-established governmental rules and systems," and "a person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information." ISCR Case No. 14-04437 at 3-4 (App. Bd. Apr. 15, 2016).

Failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information. ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019) citing Directive, Encl. 2 App. A Section 18).

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. through 1.f.	Against Applicant
Subparagraph 1.g.	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