



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



In the matter of:)
)
) ISCR Case No. 23-01580
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro Se*

10/15/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge

Statement of the Case

On October 20, 2022, Applicant submitted a security clearance application (e-QIP). On August 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. 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 10, 2023; and April 9, 2024, and requested a hearing before an administrative judge. The case was assigned to me on May 7, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on August 15, 2024, and the hearing was convened as scheduled on September 4, 2024. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 13, 2024.

Findings of Fact

Applicant is 62 years old. He is divorced with one adult child. He cohabitates with his ex-wife and adult child. He has a high school diploma and some college. He holds the position of Engineer 1. 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 identified eight allegations consisting of delinquent back taxes and medical debts totaling over \$30,000. Applicant denies allegations 1.b., and 1.c., and admits each of the other allegations with explanations. Credit reports of the Applicant dated November 12, 2022; June 20, 2023; and April 22, 2024, confirm that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 4, 5, and 6.)

From 2013 through 2016, Applicant was employed as a temporary employee working for a vendor for a defense contractor. In 2017, he was hired on as a full-time employee for the same defense contractor. He applied for a security clearance for the first time on October 20, 2022. (Government Exhibit 1.)

Applicant explained that he did not file his annual Federal income tax returns for tax years 2014 through 2023, because he knew that he would owe back taxes and he could not afford to pay them. He now realizes how stupid that was. It was not until he applied for his current job and needed a security clearance that he learned that he needed to clear up his delinquent debt. Since then, he has been working towards getting his income tax returns filed, his taxes paid, and his medical debts resolved.

The following delinquent debts are of security concern:

1.a. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$4,710. Applicant had a kidney stone attack and was uninsured at the time. He was taken to a hospital and treated for his condition. He has not paid the debt, and it remains owing on his credit report. The debt remains outstanding. (Tr. pp. 35-36, and 39.)

1.b. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount \$1,659. Applicant stated that he has no knowledge of the debt but does remember going to another hospital for chest pains when he had no insurance. He has not paid the debt, and it remains owing on his credit report. The debt remains outstanding. (Tr. pp. 37-39.)

1.c. Applicant failed to timely file, as required his state, income tax returns for tax years 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023. He stated that

he has every intent to file these income tax returns but has not yet done so. Applicant testified that his state income tax returns are prepared, but he has not filed them. He has not paid any back taxes to the state and he does not know what he owes. (Tr. pp. 39-42)

1.d. Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$7,066 for tax year 2014. He testified that for the past six months he has been following a payment plan he set up with the IRS to resolve the Federal back taxes he owes. He pays \$500 monthly toward his total indebtedness. At this point, he has reduced his Federal back taxes by \$3,000. He plans to continue to make these monthly payments until his Federal back taxes are resolved. (Tr. pp. 45-48.)

1.e. Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$1,678 for tax year 2017. He testified that for the past six months he has been following a payment plan he set up with the IRS to resolve the Federal back taxes he owes. He pays \$500 monthly toward his total indebtedness. At this point, he has reduced his Federal back taxes by \$3,000. He plans to continue to make these monthly payments until his Federal back taxes are resolved. (Tr. pp. 45-48.)

1.f. Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$1,253 for tax year 2018. He testified that for the past six months he has been following a payment plan he set up with the IRS to resolve the Federal back taxes he owes. He pays \$500 monthly toward his total indebtedness. At this point, he has reduced his Federal back taxes by \$3,000. He plans to continue to make these monthly payments until his Federal back taxes are resolved. (Tr. pp. 45-48.)

1.g. Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$1,181 for tax year 2020. He testified that for the past six months he has been following a payment plan he set up with the IRS to resolve the Federal back taxes he owes. He pays \$500 monthly toward his total indebtedness. At this point, he has reduced his Federal back taxes by \$3,000. He plans to continue to make these monthly payments until his Federal back taxes are resolved. (Tr. pp. 45-48.)

1.g. Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$14,383.78 for tax year 2021. He testified that for the past six months he has been following a payment plan he set up with the IRS to resolve the Federal back taxes he owes. He pays \$500 monthly toward his total indebtedness. At this point, he has reduced his Federal back taxes by \$3,000. He plans to continue to make these monthly payments until his Federal back taxes are resolved. (Tr. pp. 45-48.)

Assuming that Applicant has started making payments toward his Federal back taxes, he still owes at least \$21,000 in Federal tax debt. In addition, he has not yet paid either of his two medical debts totaling about \$6,000. Thus, Applicant remains excessively indebted totaling at least \$27,000.

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 ten-year history of failing to file his Federal and state income tax returns and excessive financial indebtedness. He recently started to address his income tax filings and his delinquent debts. His actions or inactions both demonstrate a history of not addressing his taxes and other financial responsibilities. 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

(f) 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 been gainfully employed on a full-time basis since at least 2017. From 2014 through 2023, for at least ten years, he chose not to file his annual Federal and state income tax returns, as required by law, because he did not have the money to pay his taxes. He stated that he recently filed his Federal income tax returns, and has entered into a payment plan with the IRS to resolve his Federal tax liability. He contends that he has been following this payment plan for six months. However, he has provided no documentary evidence to support this claim. In fact, he submitted nothing to show that he has started addressing his taxes or his other debts. Furthermore, he has not filed his state income tax returns for tax years 2014 through 2023, nor has he made any arrangements with the state to resolve any indebtedness he might have. He also has two medical debts that he has not paid. This does not demonstrate that he is financially responsible. Instead, it shows his lack of responsibility. Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. Applicant had only recently taken steps to show that he can resolve his financial delinquencies. He has avoided contacting his creditors or setting up regular systematic payments until recently. His conduct shows poor judgment and unreliability. He needs more time to diligently work towards resolving his back taxes and other delinquent debts to show the Government that he can be financially responsible. None of the mitigating conditions are applicable.

Overall, if he has made six payments of \$500 toward his Federal tax debt, given the total amount he owes, Applicant has made little progress towards resolving his debts. He still owes at least \$27,000 to his creditors. At this time, 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 has failed to show financial responsibility and is not found to be sufficiently reliable to properly protect and access classified information.

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 11 E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge