



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



In the matter of: )  
)  
) ISCR Case No. 17-02430  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis., Department Counsel  
For Applicant: *Pro se*

April 30, 2018

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On March 12, 2015, Applicant submitted a security clearance application (e-QIP). On August 4, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 *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.

The Applicant answered the SOR in writing on October 18, 2017, and requested a hearing before an Administrative Judge. DOHA received the request on a date uncertain, and the case was assigned to the undersigned Administrative Judge on January 17, 2018. DOHA issued a notice of hearing on December 15, 2017, scheduling

the hearing for January 19, 2018. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C, which were admitted without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (TR) on January 29, 2018. Applicant submitted nine Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits A through I. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 42 years old and is unmarried with no children. He has a high school diploma. He holds the position of lead warehouse specialist. 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.

Applicant has been working for his current employer since May 2, 2017. He was initially hired as a seasonal employee. After five months, he learned that the company was awarded a five year contract and needed him to become permanent. He also learned that he would need a security clearance. Applicant stated that he did not want to commit to making the payments on his debts if he was only going to be seasonal. Prior to this employment, he was unemployed for six months in 2014 due to a contract ending. During that time he received unemployment benefits but it was not enough to cover his bills. In 2011, he was unemployed again, this time for nine months due to a brain hemorrhage, and was only receiving state disability.

Credit reports of the Applicant dated May 27, 2015; and July 10, 2017, confirm that Applicant is indebted to each of the creditors listed in the SOR. (Government Exhibits 2 and 3.) The SOR identified seven debts totaling in excess of \$20,000. Applicant admits allegations 1.a., 1.c., and 1.f. He denied allegations 1.b., 1.d., 1.e., and 1g.

1.a. From 2008 to 2010, Applicant was overpaid by the Social Security Administration (SSA) in the amount of \$11,591. He explained that he was on disability when he underwent a kidney and pancreas transplant and received benefits. (Tr. p. 24, and Applicant's Post-Hearing Exhibit A.) After an audit of his medical records, the SSA determined that Applicant was overpaid for one year in the amount of about \$11,000, because he could have worked. Applicant states that it was not until 2015 that he learned that he had to pay the money back. Shortly after receiving the SOR in this matter, Applicant set up a payment plan of \$100 a month to pay this debt. At the time of

the hearing, he had made only one payment dated January 12, 2018. (Tr. p. 24, and Applicant's Exhibit A.) Applicant's Post-Hearing Exhibit A shows that he also made a payment on February 23, 2018. The debt remains owing.

1.b. Applicant owes a debt to creditor A in the amount of \$3,536 for tires and rims he purchased in 2016. (Tr. p. 27.) Applicant contends that he was paying creditor A through bank account automatic deductions until the account was sold to creditor B. He stopped making payments to creditor A to pay creditor B (see below), but they would not accept a payment plan. They wanted payment in full. The debt remains owing. Applicant states that he has recently hired an attorney to help him resolve this debt. A letter from Applicant dated March 24, 2018, indicates that he has a significant financial hardship and cannot pay the debt at this time. (Applicant's Post-Hearing Exhibit B.)

1.c. Applicant owes a debt to creditor B in the amount of \$2,593 for tires and rims purchased above. The debt was sold to creditor B and the creditor requires payment in full in the amount of approximately \$6,000. The debt remains owing. Applicant states that he has recently hired an attorney to help him resolve this debt. A letter from Applicant dated March 24, 2018, indicates that he has a significant financial hardship and cannot pay the debt at this time. (Applicant's Exhibit C and Applicant's Post-Hearing Exhibit C.)

1.d. The SOR alleges that Applicant is indebted to a creditor for cable services in the amount of \$362. Applicant claimed that someone wrongfully used his identity to turn on cable services. Applicant filed a police report claiming that this is an invalid and fraudulent account. He states that the police and detectives are involved and currently working on the case. (Tr. p. 29.) Applicant provided several documents from his police report showing that he has filed a report concerning this creditor asserting that the debt is fraudulent. (Applicant's Post-Hearing Exhibit D.) I find that the debt is being disputed.

1.e. Applicant is indebted to the Federal Government for a tax lien entered against him in November 2008 in the amount of \$5,727. Applicant states that for two and a half years his wages were garnished in the amount of \$250 per month. The garnishment stopped in 2009. (Applicant's Exhibit B, and Government Exhibit 5.) Applicant provided a report of payments in the amount of \$100 monthly to be applied to above account on February 26, 2018, showing a current balance owed of \$1,212.88. (Applicant's Post-Hearing Exhibit E.)

1.f. Applicant owes a debt to a creditor for an account that was charged off in the approximate amount of \$1,314. Applicant states that he purchased a stereo in 2012/2013 for \$600 from a rent to own establishment. The company went bankrupt, and sold the debt to a third party. After making six payments, Applicant stopped making payments because the store closed down. In 2017, Applicant contacted the new creditor and they informed him that that he owed \$1,300. Applicant does not believe he owes that amount. After understanding the finance charges involved, Applicant states that he plans to pay the debt. The debt remains owing. (Applicant's Exhibit F.)

1.g. Applicant owes a debt to a creditor for a delinquent cable bill. Applicant remembers that he allowed a friend who has bad credit to get cable in his name, and she was supposed to pay the bill. She did not pay and now he owes the debt in the amount of \$375. Applicant asserts that this debt may be a similar debt to the one alleged in 1.d. and that the police report he submitted pertains to this debt too. The debt remains owing. (Applicant's Exhibit G.)

Admittedly, Applicant has tried to resolve his debts by making a payment of \$100 to a creditor here and \$100 payment to a creditor there. This effort is not enough and is done at such a late date that its meaning is insignificant. In total, Applicant still owes a significant amount of money to his creditors that he cannot afford to pay. 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. Applicant's excessive financial indebtedness has not been sufficiently resolved.

## **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 access to classified information 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;
- (b) unwillingness to satisfy debt 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 is delinquently indebted in excess of \$20,000. His actions demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are potentially applicable under AG ¶ 20.

(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;

(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.

It is recognized that Applicant's periods of disability brought on by health problems coupled with his unemployment history were conditions largely beyond his control that contributed to his delinquent debts. However, since May 2017, Applicant has been working for his current employer on a full-time basis. He did not take his indebtedness seriously until he learned that he would need a security clearance, and even so, his debts remain excessive. He has still failed to sufficiently address his delinquent debts. There is no evidence that he has acted responsibly under the circumstances, except with regard to 1.d, which he has disputed. His inaction casts doubt on his current reliability, trustworthiness, or good judgment.

### **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 Financial Considerations security concern.

### **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.:	Against Applicant
Subparagraphs 1.b.:	Against Applicant
Subparagraphs 1.c.:	Against Applicant
Subparagraphs 1.d.:	For Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	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