



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



In the matter of:

ISCR Case No. 17-02463

Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

June 11, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On June 1, 2016, Applicant submitted a security clearance application (SF-86). (Government Exhibit 1.) On August 30, 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 *Adjudicative Guidelines*, effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing on September 27, 2017, and requested a hearing before an Administrative Judge. DOHA received the request on November 16, 2017, and the case was assigned to another Administrative Judge. The notice of hearing was issued on December 11, 2017, scheduling the hearing for January 18, 2018. The case was transferred to the undersigned Administrative Judge on January

17, 2018. The hearing was convened as scheduled. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. 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. The record in this matter remained open until close of business on January 29, 2018, to allow the Applicant to submit additional supporting documentation. Applicant submitted seven Post-Hearing Exhibits, referred to as A through G were admitted without objection. DOHA received the transcript of the hearing (TR) on January 26, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 40 years old and married. He has a high school diploma. He is employed with a defense contractor as a Crane Operator/Rigger/Equipment Operator. 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 four delinquent debts totaling approximately \$19,769. Applicant admits all of the debts, except 1.d., that he asserts is a duplicate of the debt set forth in allegation 1.c. (Tr. pp. 39-42.) The debt in the SOR is for delinquent consumer and medical debt. Credit reports of Applicant dated July 6, 2016; June 20, 2017; and November 3, 2017, reflect that each of the debts remain outstanding. (Applicant's Exhibits 3, 4, and 5.)

Applicant served in the United States Navy as an inactive reservist from July 1997 to July 2001. He began working for his current employer in May 2016.

Prior to his current employment, Applicant was laid off from his job in September 2015 and was unemployed until May 2016. After March 2016, his unemployment benefits were exhausted. (Applicant's Exhibit A.) As a result, he fell behind on his bills. He tried to sustain his household with unemployment benefits, but it was not enough. He had no savings. In retrospect, Applicant realizes that planning ahead for life surprises, like losing a job, would have been a good idea. He was forced to make difficult decisions about whether to continue making payments toward his debt or to try to keep his home and food on the table for his family. For the most part, he believes that he did not live beyond his means, and only purchased necessities. Prior to his job lay-off, he had no financial problems. At that time he was earning \$27 per hour. At his current job, he earns \$23 per hour. Due to the current decrease in pay, it has taken him

some time to address his delinquent debt. The following debts listed in the SOR became owing:

1.a. A debt to a creditor for a vehicle Applicant purchased prior to his job lay-off was repossessed when he could no longer afford to make the payments. The vehicle was sold by the creditor, and the deficiency owed by the Applicant is approximately \$8,614. The account remains owing.

1.b. A debt owed to a creditor for a delinquent credit card account was charged off in the amount of \$4,348, and remains owing.

1.c. A debt owed to a creditor for a delinquent medical account was placed for collections in the amount of approximately \$3,585. The debt remains owing. Applicant explained that he developed kidney stones and had to go to the emergency room for treatment when he could not afford medical insurance.

1.d. This debt is apparently the same debt as that set forth in allegation in 1.c. above. Accordingly, 1.d. is found for the Applicant.

After receiving the SOR in this matter, in September 2017, Applicant contacted and hired a debt consolidation company to assist him and his wife in resolving their debt. (Applicant's Exhibits A and C.) Applicant testified that the company has not yet begun to address any of the debts listed in the SOR, since they are focusing on his wife's debt first. Applicant testified that together they have about \$28,000 in delinquent debt. (Tr. p. 57.) Applicant is currently making bi-weekly payments of \$253 for 42 months to the debt consolidation company to resolve their debts. Applicant erroneously testified that his payments were \$150 bi-weekly for 24 months toward the debt until it is resolved. He later testified that his wife handles the finances, and has a better handle on their financial matters.

Applicant Post-Hearing Exhibit A indicates that upon re-evaluating the debt consolidation program, Applicant cancelled the agreement. He learned that the debt consolidation company was taking 25 percent of what he owes in debt from his money he pays to them each month to cover their fees. He decided that he could contact his creditors and set up payment arrangements himself, and use that money that they take in fees toward his payments. Applicant testified that in January 2018, he set up payment plans with each of the creditors listed in the SOR on his own. Applicant's wife also prepared a financial budget that she and the Applicant plan to follow in order to maintain financial stability and resolve their debts.

Applicant stated that when he was hired by his current employer, he knew the job required a security clearance, but he did not understand the importance of having his finances in order. (Tr. p. 61.)

A letter from the Applicant's supervisor from August 2016 through August 2017, indicates that he considers the Applicant to be reliable, committed to his job, and dependable. Applicant is described as a team player who would take on any job and do

it right, with outstanding character and high integrity and drive. He is recommended for a security clearance. (Applicant's Exhibit B.)

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;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant is delinquently indebted in the amount of \$28,000. His actions demonstrate 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 condition under the Financial Considerations is 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.

It is recognized that Applicant's long period of unemployment, a period of underemployment, and his failure to plan for a financial emergency contributed to his

current financial situation. Although he hired a debt consolidation company to assist him in resolving his debts, he has now cancelled their contract, and has taken on the responsibility himself to resolve his debts. He has recently set up payments plans with each of the outstanding creditors listed in the SOR, and plans to follow his payment plans until the debts are completely resolved. Applicant is commended for this recent action, but he should have done this long ago. There needs to be a pattern of systematic payments to show a pattern of financial responsibility. This evidence is lacking. There is insufficient evidence here to show that he has acted responsibly under the circumstances. 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 the 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

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