



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



In the matter of:

ISCR Case No. 17-02613

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

June 11, 2018

Decision

LOKEY ANDERSON, Darlene D, Administrative Judge:

Statement of Case

On October 14, 2016, Applicant submitted a security clearance application (SF-86). On August 29, 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. 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 on November 9, 2017, and requested a hearing before an administrative judge. The case was assigned to me on January 17, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 15, 2017, scheduling the hearing for January 19, 2018. The hearing was convened as scheduled. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. Applicant

presented no exhibits at the hearing. He testified on his own behalf. The record remained open until close of business on February 1, 2018, to allow the Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, marked as A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 29, 2018.

Findings of Fact

Applicant is 61 years old and married with six children, one is deceased. He has a high school diploma, and a year and a half of college. He is employed with a defense contractor as an Aircraft Painter. 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 the fact that Applicant failed to file his Federal and state income tax returns for tax years 2006, 2007, 2010, 2011, and 2012. It also alleged that Applicant's delinquent debt include delinquent consumer debt, and credit cards, state tax liens, child support arrearage, and medical bills which total in excess of \$45,000. Applicant admits allegations 1.a., 1.b., 1.c., 1.f., 1.h., 1.i., 1.k., 1.o., 1.p., and 1.q., in the SOR. He denies allegations 1.d., 1.e., 1.g., 1.j., 1.l., 1.n., and 1.m. (Applicant's Answer to SOR.)

Applicant testified that he has been working for his current employer since 2010, and has never held a security clearance before. He attributes his financial difficulties to periods of unemployment, job lay-offs, and an injury on the job which have interrupted his ability to earn full compensation. From 2013 to 2016, Applicant was off work due to an on-the-job injury which resulted in knee replacement surgery and recovery time. During that period Applicant received workers compensation and disability benefits only.

During these periods of under-employment or no employment at all, Applicant continued to do his best to provide for his family, but allowed his other bills to fall behind. Applicant does not reside with his wife or his children. His children are all adults and he maintains contact with three of them. His youngest child is 29 years old and his oldest is 42. He states that he still provides financial support to help them. He also has seventeen grandchildren. (Tr. p. 71.)

As a result of his security clearance background investigation, Applicant understands the importance of resolving his delinquent debt, and he explained that he has now filed the income tax returns in question. He stated that earlier, he had hired an old friend who runs a tax preparation business to prepare and file them for him, but

things went wrong and documents were lost. In 2017, Applicant rehired his friend to again prepare and file his income tax returns. This time, apparently the income tax returns in question were filed. (Applicant's Post-Hearing Exhibit A.)

Turning to the delinquent debts listed in the SOR, all of them have been outstanding for many years. It was not until October 2017 that Applicant sought out serious help and hired a law firm to assist him and his son in cleaning up their credit report and resolving his delinquent debts. A number of delinquent debts have already been removed from Applicant's credit report by the law firm claiming that they were either in dispute or erroneous. Applicant provided a copy of the credit report removals which show that 13 separate creditors were removed from his credit report. Those creditors listed in the SOR that have been removed from the Applicant's credit report are 1.f., 1.g., 1.h., 1.i., 1.n., and 1.o. It is not clear from the evidence provided by the Applicant if the other creditors that were removed by the law firm are listed in the SOR. What is clear in this case is the fact that although he admitted many of the debts, instead of paying the debts, he hired a law firm to dispute them, and/or claim they were erroneous, and get them removed from his credit report.

Applicant estimates that he still currently owes the state about \$8,500, and the Federal Government approximately \$12,000. He has not yet set up payment arrangements to repay those taxes. He also currently owes the child support arrearages in the amount of about \$15,000. (Tr. p. 60, and Applicant's Exhibit Post-Hearing Exhibit A.)

Applicant candidly testified that he did not really start to resolve his debt until he realized that it would have some impact on his security clearance and his employment. Applicant testified that he works full time and his current salary is \$27.18 per hour. He currently has \$58 and some change in his checking account, and he has about \$4.09 in his savings account. He hopes that his overtime will continue and that he will be able to use that money to resolve any other debts.

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.

Directive ¶ E3.1.14 requires the government to 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.

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 five years, between tax year 2006 through 2012. There are three state tax liens entered against the Applicant for tax years 2008, 2010 and 2015, totaling approximately \$11,000 that remain outstanding as well as other delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. Three are potentially applicable here.

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;

20(c) the condition that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft, and the individual acted responsibly under the circumstances; and

20(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 these mitigating conditions partially apply, they do not fully mitigate the fact that Applicant has not as of yet resolved his tax debt, and based upon his financial calculations he does not currently have the financial resources available to him to pay the other debts. Although Applicant had several creditors removed from his credit report, he did so, knowing that he had incurred the debt. He did not pay the debt, but instead, disputed the debt, and had it removed from his credit report, as the debt was old. Under the circumstances, this does not show that Applicant is financially responsible or that his finances are stable. Accordingly, this guideline must be found against him.

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 must continue to work to resolve his delinquent debt. He must pay his back taxes. He must also resolve his child support arrearage, and any other outstanding delinquent debt that is owing. It obviously took time to get into debt, it will also take some time to resolve it. He must show a pattern of financial responsibility. Assuming he does this, he may very well be eligible for a security clearance in the future, but not at this time. 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 Consideration security concerns.

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.:	Against Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	Against Applicant
Subparagraphs 1.h.:	Against Applicant
Subparagraphs 1.i.:	Against Applicant
Subparagraphs 1.j.:	Against Applicant

Subparagraphs 1.k.:	Against Applicant
Subparagraphs 1.l.:	Against Applicant
Subparagraphs 1.m.:	Against Applicant
Subparagraphs 1.n.:	Against Applicant
Subparagraphs 1.o.:	Against Applicant
Subparagraphs 1.p.:	Against Applicant
Subparagraphs 1.q.:	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