



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



In the matter of: )  
)  
) ISCR Case No. 18-00552  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Jessica R.K. Dorman, Esq., Claery & Hammond, LLP

September 18, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On November 13, 2015, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On March 16, 2018, 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 (CEO) 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on April 16, 2018, and requested a hearing before an administrative judge. The case was assigned to me on June 15, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on June 21, 2018, and the hearing was convened as scheduled on August 7, 2018. The Government offered eight

exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant offered twelve exhibits, referred to as Applicant's Exhibits A through L, which were admitted without objection. Applicant called three witness and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 15, 2016.

### **Findings of Fact**

Applicant is 49 years old and unmarried. He has a high school diploma and some college. He is employed by a defense contractor is a Simulator Technician II. 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 that Applicant filed for Chapter 7 bankruptcy relief in April 2015 and for Chapter 13 bankruptcy relief in July 2017. Credit reports of the Applicant dated February 20, 2009; October 24, 2017; December 2, 2017; and May 25, 2018, confirm the debts listed in each of the bankruptcies. (Government Exhibits 5, 6, 7 and 8.) Applicant has been working for his current employer since November 2016. He first obtained a security clearance in 2008. (Tr. p. 103.)

Applicant has a long history of financial problems. In 2001, his step-mother passed away, leaving his elderly father as the primary caregiver of Applicant's six year old sister. At the time, Applicant's father was also financially supporting Applicant's brother with schizophrenia, who lives in an assisted living facility. In 2008-2009, Applicant became involved in his father's finances, as his father started having dementia. Applicant wanted to help provide financial assistance, so he used his credit cards to pay medical bills, and obtained personal loans to pay for property taxes, home expenses and auto repairs. Applicant also helped to pay for his younger sister's private school and his older brother's care in the facility. As time passed, to continue paying for these things, Applicant took out a home equity line of credit (HELOC) on his father's home. At this point, they also put money aside to cover the costs for Applicant's father's funeral expenses, a mold repair issue in his bedroom, and the house remodel. Applicant's father was also on the loan, which raised the interest rates, due to his bad credit, and Applicant could not afford to pay make the payments. Applicant stated that in 2016 he traveled to Croatia for vacation. (Tr. p. 133.)

Applicant testified that his siblings told him that if he did not pay off his father's debts, the trust would have to cover the expenses, and since they hold inheritance interests, they did not want to pay for their father's bills. (Tr. p. 122-123.) Applicant holds a 25% interest in the trust.

Applicant is a devoted son and loves his family. To honor his father, over the years, at his own choice, he has tried to be responsible for his father's debts, while neglecting his own debts, knowing that he could not afford it. Applicant has three older brothers and two step-sisters. None of the other siblings have helped Applicant with their father's expenses. Applicant's father passed away in 2014.

In April 2015 Applicant filed for Chapter 7 bankruptcy. (Applicant's Exhibit A.) Excessive credit-card debt and personal loans Applicant used to help the family in the amount of approximately \$40,000 were discharged in July 2015. (Applicant's Exhibit D and Tr. p. 161.) The only assets that were not discharged were Applicant's car, his student loans, and the mortgage on the house, which still amounted to about \$90,000 in debt for which Applicant was at that time current. (Tr. p. 129.) Applicant received financial counseling and debtor education related to this bankruptcy. (Applicant's Exhibits B and C.)

Following this Chapter 7 bankruptcy, Applicant was laid off from his job for about three or four months. He again fell behind on the bills. To consolidate the debt, and to obtain a structured payment plan, he filed for Chapter 13 in July 2017. (Applicant's Exhibit E.) Applicant testified that he is following a five year payment plan and is current with his payments. (Applicant's Exhibits H, I, J, K, and L, and Tr. p. 139.) Applicant stated that he now realizes that his family has taken advantage of him over the years by allowing him to pay for everything instead of providing him with some help. Applicant has incurred no new debts. He has also received financial counseling and debtor education related to this bankruptcy. (Applicant's Exhibits F and G.)

Applicant's credit history shows that he had financial difficulties even before he started trying to help his father with his bills in 2008. (Tr. pp. 149 -191 and Government Exhibits 5, 6, 7 and 8.) His credit report dated February 20, 2009, reflects numerous collection accounts and charge-off accounts. (Tr. pp. 145 -150.)

Three witnesses testified on Applicant's behalf who all met him at church, and who are longtime friends and/or coworkers. They all hold or have held a security clearance at some point. They collectively attest to Applicant's good judgment, reliability and trustworthiness, and recommend him for a security clearance. (Tr. pp. 29 - 89)

## **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 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.
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or non-payment, or other negative financial indicators.

Applicant is a compassionate and kind-hearted man, but he has made bad decisions that have negatively affected his financial situation. Namely, he took on the responsibility of paying his father's expenses, including the expense to help his younger sister and disabled brother, even though he could not afford to do so. Instead of paying his own bills, he continued over the years to provide his family with financial support. As a result, this effort grew over the years, and resulted in two bankruptcies. The choice was all his. 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.

Recently, Applicant has learned that he was badly taken advantage of by his siblings, and although he does not want this situation to happen again, and as he testified, he cannot guarantee that it will not. Applicant's Chapter 7 in 2015, and his current Chapter 13, filed just last year in 2017, reflects that he will be trying to resolve his debts for the next five years. Hopefully, he can afford to follow the payment plan to

resolve his debts. Despite this, there remain many questions about 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

## **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