



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



In the matter of:

ISCR Case No. 18-00390

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

September 6, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On July 15, 2016, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On March 12, 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 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on April 2, 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 five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without

objection. The Applicant offered two exhibits, referred to as Applicant's Exhibits A and B, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on August 21, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 15, 2018.

Findings of Fact

Applicant is 28 years old and is getting a divorce. He has a bachelor's degree in Business Management. He is employed by a defense contractor as a Foreign Disclosure Assistant. He is seeking to obtain a security clearance in connection with his employment. Applicant has been employed with his current employer since September 2017.

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 six delinquent debts totaling approximately \$22,000. Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated October 25, 2016; and January 23, 2018, reflect that the debts were at one time owing. (Government Exhibits 3 and 4.)

At the age of eighteen, Applicant joined the United States Navy from 2008 to 2013, turning down college scholarships to help financially support his parents. In 2013, he received an honorable discharge at the rank of E-4. Applicant only got out of the Navy in 2013 because he wanted to get his education and then become an officer. During his military career, he went on deployment twice, and he received two Navy Achievement Medals. Applicant held a security clearance during his military career that was transferred to his current employer. After leaving the Navy, Applicant moved out of state to live with a friend with the idea that he could save money. His friend lost his job, and Applicant ended up trying to pay the bills, but did not earn enough to do so. Applicant was unable to afford the car he had purchased while in the Navy. Applicant moved back to his home state in September or August 2014, and started working for his current employer in September 2017. Since then Applicant has been paying off his debts and building his credit.

The following delinquent debts became owing:

1.a. Applicant was indebted to Navy FCU for an account that was charged off in the approximate amount of \$19,612. This was a car that Applicant purchased while in the

Navy that he could no longer afford when he left the military. Applicant sold the car to carmax for \$11,500 in January 2014. Applicant set up a payment plan with the creditor in the amount of \$221.12 monthly that started March 23, 2018, which he has been paying and will continue to pay until the debt is resolved. (Applicant's Exhibit B and Tr. p. 24.)

1.b. Applicant was indebted to Navy FCU for an account that was charged off in the approximate amount of \$1,435. Applicant set up a payment plan with the creditor in the amount of \$221.12 monthly that started March 23, 2018, which he has been paying and will continue to pay until the debt is resolved. (Applicant's Exhibit B and Tr. p. 24.)

1.c. Applicant was indebted to creditor for an account that was placed for collection in the approximate amount of \$643. Applicant set up a payment plan with the creditor in the amount of \$170.95 monthly that started on February 26, 2018, which he has been paying and will continue to pay until the debt is resolved. (Applicant's Exhibit A and Tr. p. 23.)

1.d. Applicant was indebted to a creditor for an account that was charged off in the approximate amount of \$294. Applicant paid the debt in full on August 21, 2018. (Applicant's Post-Hearing Exhibit B.)

1.e. Applicant was indebted to a creditor for an account that was 120 days or more past due in the approximate amount of \$126 with a total loan balance of \$552. This is an old credit card. Applicant states that the debt has been paid off in full and it is no longer showing as delinquent on his credit report. (Applicant's Post-Hearing Exhibit A and Tr. p. 47.)

1.f. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$776. This was a debt owed for military housing. Applicant states that the debt has been paid off in full. (Applicant's Post-Hearing Exhibit A and Tr. 48.)

Applicant now follows a monthly financial budget. (Applicant's Post-Hearing Exhibit A.) After paying his regular monthly expenses, he has \$821 left at the end of the month in discretionary funds. He now lives with two roommates and they share the rent in order to reduce his monthly expenses. Applicant's is now current with all of his monthly financial obligations. He is living within his means and spending his money responsibly.

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 was delinquently indebted in the amount of \$22,000. Transitioning from military life to civilian life has been difficult. However, he has made the adjustments and has been demonstrating that he can resolve his debt. 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

It is recognized that leaving the military, having problems finding a suitable job, and going through a long divorce has prevented Applicant from being able to pay his debt. Since obtaining full-time employment with a defense contractor in September 2017, Applicant has been working diligently to resolve his debts. He has either set up payment plans with the creditors that he is following, and/or he has paid off the outstanding debt. There is clear evidence in the record that he has acted reasonably and responsibly under the circumstances. His actions reflect reliability, trustworthiness, and 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 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:	FOR APPLICANT
Subparagraphs 1.a.:	For Applicant
Subparagraphs 1.b.:	For Applicant
Subparagraphs 1.c.:	For Applicant
Subparagraphs 1.d.:	For Applicant
Subparagraphs 1.e.:	For Applicant
Subparagraphs 1.f.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge