



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



Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

02/03/2025

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 30, 2023, Applicant submitted a security clearance application (e-QIP). On July 12, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) 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 *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.

Applicant answered the SOR on September 20, 2024, and requested a hearing before an administrative judge. The case was assigned to me on November 13, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on November 19, 2024, and the hearing was convened as scheduled on December 12, 2024. The

Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. Applicant offered ten exhibits, referred to as Applicant's Exhibits A through J, which were admitted without objection. Applicant testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on December 23, 2024.

Findings of Fact

Applicant is 46 years old. He is married and has three children. He has a Bachelor's degree and extensive military training. He holds the position of Senior Analyst for a defense contractor. 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 alleged that Applicant has five delinquent accounts owed to creditors that were charged off or placed for collection totaling approximately \$68,000. In his answer, Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated May 4, 2023; December 5, 2023; and November 4, 2024, confirm that he was at one time indebted to each of the creditors listed in the SOR. (Government Exhibits 4, 5, and 6.)

In the fall of 2002, Applicant entered the Navy Delayed Entry Program. In February 2003, he started Officer Candidate School. From 2003 to February 20, 2020, he served on active duty in the Navy. After seventeen years on active duty, to his disappointment he was passed over for command promotion, and voluntarily transitioned to the reserves. His wife was unhappy with his current duty station, and he was unhappy about being passed over for command. The reserves was a viable option. While in the reserves, Applicant activated and deployed to Japan taking his family with him, for eighteen months beginning in October 2020. Applicant retired from the reserves on December 1, 2023, as an O-5, Commander. Applicant started working as an Engineer for his current employer in April 2022.

Applicant stated that he had no financial problems until February 2020. Although he had previously credit card and personal loan debt, he had always serviced the debt each month in a timely fashion. However, after February 2020, he was spending more money than he was earning, and he was falling farther behind on his bills. He explained that from 2017 to 2020, he accepted a billet for a three-year assignment located in Norfolk, Virginia, that he thought would help his career. His wife was not happy about it, and to make appease her, he moved her and the family not far from Norfolk into an oceanfront beach house to live for three years. The beach house was in an area that

was more affluent, with a higher cost of living. The beach house rental was expensive and cost roughly \$500 more a month than the basic housing allowance Applicant was receiving. At the same time, Applicant was applying for personal loans and pulling money out of his brokerage account to pay his wife's college tuition. Their plan was to send her to college to obtain a degree to help her start a career. This created more financial strain.

Applicant stated that the pandemic resulted in his delayed start, his wife was laid off from both of her previous jobs, and they spent a month in March 2020, without income. They lived off of their savings that month and then in April 2020, Applicant began earning about \$100,000 annually. He stated that he used his income at that time to pay his rent, the utilities, and the car payments. He made the conscious decision not to pay his delinquent debts because he was never in a position to bring the accounts current. (Tr. p. 61.)

In April 2022, Applicant began working for his current employer. After he received the SOR in July 2024, he reached out to his creditors and began to address his delinquent debts. The debts that are being paid through installment agreements started in August 2024. After his wife completed her education, she started working full time in March 2024, and she now contributes her income to pay for household expenses.

The following delinquent debts listed in the SOR are of security concern:

1.a. Applicant is indebted to a credit union for an account that was placed for collection in the approximate amount of \$26,055. Applicant stated that this is a personal loan, which he used to pay for his wife's tuition. He has now reached a settlement of the debt in the amount of \$11,725. He has set up an installment plan of 36 payments of \$325.70 monthly. The payments started in August 2024 and will continue each month until the debt is paid in full. At the time of the hearing, Applicant had made four payments. His last payment to resolve the debt in full will be in July 2027. (Tr. pp. 69-71, and Applicant's Exhibit D.)

1.b. Applicant is indebted to a credit union for a delinquent credit card account that was placed for collection in the approximate amount of \$14,368. Applicant has no idea what he purchased with the credit card. Applicant stated that he settled the account for an unknown amount on August 15, 2024. He received a bonus from his employer that he used to resolve the debt. (Tr. pp. 80-81 and Tr.p. 83, and Applicant's Exhibit E.)

1.c. Applicant is indebted to a creditor for a brokerage account that was placed for collection in the approximate amount of \$13,030. Applicant stated that he has tried to settle the debt with the creditor but has not been successful. Since August 2024, he has voluntarily made payments of \$250 each month to the creditor until they reach a settlement agreement or until the debt is paid in full. (Tr. pp. 74-76.)

1.d. Applicant is indebted to a creditor for a student loan that was charged-off in the approximate amount of \$28,000. Applicant explained that this was a personal loan he took out for his wife's college tuition. He initially borrowed about \$20,000, but with penalties and interest the debt has climbed to about \$28,000. He has reached a settlement of the debt in the amount of \$11,308.50, payable in 30 installments of \$376.95 each month. His first payment was made on August 20, 2024, which will continue each month until the debt is paid in full in January 2027. (Tr. p. 76-78, and Applicant's Exhibit F.)

1.e. Applicant is indebted to a credit union for an account that was charged off in the approximate amount of \$14,881. On August 29, 2024, Applicant settled this account for \$4,000. He made two payments of \$1,860.21 for a total of \$3,720.42. Applicant stated that he withdrew the money from his 401K to settle the debt. The debt has been resolved in full and is no longer owing. (Tr. pp. 79-80 and Applicant's Exhibit H.)

Applicant's Personal Financial Worksheet dated November 27, 2024, indicates that after making his regular monthly payments and paying his delinquent debt monthly installments, he has a net remainder of \$2,408 left at the end of the month. He can comfortably pay his delinquent debt. (Applicant's Exhibit A.)

Applicant's Navy Fitness Report and Counseling Record for the period from May 1, 2021, through March 31, 2022, as a Commander, reflects ratings of "above standards" or "greatly exceeds standards" in every category. (Applicant's Exhibit J.)

Applicant received a certificate for receiving financial counseling from In Charge Debt Solutions, dated December 30, 2021. (Applicant's Exhibit I.)

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;
- (c) a history of not meeting financial obligations; and
- (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 of non-payment, or other negative financial indicators.

Applicant is a retired Navy Commander who has a history of financial hardship brought on by poor choices he made to live beyond his means. His actions or inactions both demonstrated a history of not addressing his debt in a timely fashion and/or an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 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;
- (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;
- (d) the individual initiated and is adhering to a good faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant's excessive spending has contributed to his financial problems. He has made some poor financial decisions without considering the consequences and the affects it might have on his security clearance. He has recently re-directed his focus at resolving his delinquent debts. He now realizes his serious mistake and the fact that he should have addressed his delinquent debts sooner, in fact as soon as he earned enough money to do so. Instead, he waited to pay his delinquent debts when it became

more convenient for him. He was wrong. In order to be eligible for a security clearance an individual must be responsible and trustworthy in every aspect of his life, including his finances. At this point, he has paid off or settled two of his delinquent debts, and he is making monthly payments to resolve the others. Although he has not established a long track record, he has demonstrated a short track record of payments, or systematic monthly payments, for the past four months and plans to continue those payments each month, without interruption, until the debts are completely resolved. He intends to resolve each of his debts as swiftly as possible.

Applicant is currently focusing on resolving his delinquent debt. Although he still remains excessively indebted to several of his creditors, he has reached settlement agreements, and set up installment plans that he is following. He and his wife are gainfully employed and earn sufficient monies to resolve these delinquent debts. Under the circumstances he has recently shown the requisite good judgment and responsibility to access classified information. There is sufficient 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.

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 follow through with his commitment to resolve his delinquent debts to show financial responsibility. He must continue to demonstrate that he can resolve his debts and live within his means, to demonstrate financial responsibility. Assuming he continues to follow these conditions, he will maintain eligibility for access to classified information. In the event that he does not make his bills a priority to resolve, his security clearance will be in immediate jeopardy.

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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a., through 1.e.

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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge