



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-00255
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

January 27, 2020

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**Decision**

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Lokey Anderson, Darlene D., Administrative Judge:

On April 27, 2017, Applicant submitted a security clearance application (e-QIP). On June 20, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. (Item 1.) The action was taken under Executive Order (EO) 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 Policy effective June 8, 2017.

Applicant answered the SOR on August 29, 2019, and requested a hearing before an administrative judge. The case was assigned to me on November 6, 2019. DOHA issued a notice of hearing that same day, and the hearing was convened as scheduled on December 5, 2019. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. Applicant offered one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. Applicant also testified on his own behalf. The record remained open until close of business on December 12, 2019, to allow Applicant the opportunity to submit

additional supporting documentation. Applicant submitted no additional documentation. DOHA received the transcript of the hearing (Tr.) on December 16, 2019.

### **Findings of Fact**

Applicant is 53 years old. He has been married for twenty-three years to his second wife. He has four adult children. He has a high school diploma and an Associate's degree. He is employed with a defense contractor as an Engineer Technician. He is applying for a security clearance in connection with his employment. Applicant began working for his current employer in January 2019.

### **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 twenty-one separate allegations involving a variety of financial problems. Applicant filed for Chapter 7 bankruptcy in 2010. He failed to file his Federal income tax returns for tax years 2007, 2010, 2014, and 2017. The Government alleges that he owes a total of approximately \$66,390 in delinquent Federal taxes. Applicant believes the total amount he owes in Federal back taxes is closer to approximately \$22,000 or \$23,000 dollars. Applicant also failed to file his state income tax returns for tax years 2009, and 2010, and 2014 through 2017. He owes approximately \$3,514 in delinquent state taxes. He has ten other delinquent debts totaling approximately \$9,898. Applicant admits to each of the delinquent accounts listed in the SOR, except 1.j., 1.k., 1.l., 1.m., 1.p., 1.q., 1.r., 1.s., and 1.h. Credit Reports of Applicant dated July 6, 2017; May 24, 2018; and October 31, 2019, confirm the indebtedness listed in the SOR. (Government Exhibits 5, 6, and 7.)

Applicant served on active duty in the U.S. Navy from 1986 to October 2007 when he received an honorable discharge. He retired as an E-6 culinary specialist. During his military career, he deployed to many countries around the world, including Japan, Singapore, Thailand, Brunei, Malaysia, Hong Kong, Abu Dhabi, Australia, Guam, Hawaii, and Samoa.

Applicant testified that his financial problems snowballed over time because he did not pay close attention to them while he was out at sea. After retiring from the military, he continued to live beyond his means. Bills continued to come in, and he was unable to pay them. By 2010 his financial problems were so out of his control, he filed for Chapter 7 bankruptcy. Matters were complicated because Applicant also failed to file his Federal and state income tax returns for tax years 2009, 2010 and 2014, 2015, 2016 and 2017. Applicant stated that there was no good reason, he simply did not file his income tax returns. He explained that for years while in the military, when he filled out his W-4, he took out the maximum amount of exemptions he could, which left him paying very little in taxes. Thus, he always owed a lot of taxes at the end of the year.

Since 2007, Applicant has changed his exemptions to prevent this problem. He now understands the ramifications of doing this. As of the hearing Applicant had still not filed the Federal income tax returns in question. (Tr. p. 32.) Applicant had not filed his state income tax returns in question either. (Tr. p. 36.) However, he states that he has taken care of his back taxes owed to the state. Applicant testified that he has contacted several tax preparing agencies, but each time they took his money and were not successful in getting his taxes filed. His latest tax preparer has all of Applicant's paperwork, but has not yet filed his 2018 Federal and state income tax returns. (Tr. p. 37.)

Applicant also offered that from 2007 to 2009 he lived in Texas and he gambled at the racetrack quite a bit. He was unemployed from February 2012 to May 2013; and from August 2015 to April 2016. During those periods of unemployment, however, he collected unemployment benefits, to live on. He also received his military retirement as well as his 90 percent VA disability. (Tr. pp. 28-29.) The following delinquent debts remain owing:

1.d. A Federal tax lien was entered against the Applicant in the amount of approximately of \$21,286 for tax year 2007. He states that he has not started paying on this yet. (Tr. p. 45.)

1.e. A Federal tax lien was entered against the Applicant in the amount of approximately \$8,941 for tax year 2008. (Government Exhibit 3.) He states that he has not started paying on this yet. (Tr. p. 45.)

1.f. A Federal tax lien was entered against the Applicant in the amount of approximately \$4,848 for tax year 2009. (Government Exhibit 3.) He states that he has not started paying on this yet. (Tr. p. 45.)

1.g. A Federal tax lien was entered against the Applicant in the amount of approximately \$1,837 for tax year 2010. (Government Exhibit 3.) He states that he has not started paying on this yet. (Tr. p. 45.)

1.h. A Federal tax lien was entered against the Applicant in the amount of approximately \$23,951 for tax year 2008. (Government Exhibit 3.) He states that he has not started paying on this yet. (Tr. p. 45.)

1.i. A Federal tax lien was entered against the Applicant in the amount of approximately \$5,527 for tax year 2011. (Government Exhibit 3.) He states that he has not started paying on this yet. (Tr. p. 45.)

1.j and 1.k. Two state tax liens have been entered against the Applicant in the amount of approximately \$1,767 for tax year 2010; and in the amount of approximately \$1,747 for tax year 2012. In 2017, Applicant began following a regular payment plan of \$500 monthly toward these debts. He explained that it is automatically deducted out of his payroll check on a monthly basis. He has about four payments left until his state tax liens are paid in full and removed. (Tr. p. 49.)

1.l. and 1.m. Applicant has a delinquent debt owed to a creditor in the amount of \$285. He believes this was for a credit card that he has since paid off. He has not provided any documentation to substantiate this pay-off. Accordingly, it remains owing.

1.n Another delinquent debt owed to a creditor in the amount of approximately \$2,600 was a loan that Applicant thought he made several payments on. (Tr. p. 54.) He has not provided any documentation to substantiate these payments. Accordingly, it remains owing.

1.o. Another delinquent debt is owed to a creditor in the amount of \$537. This was also a credit card. (Tr. p. 56.) He has not provided documentation to substantiate any payments made to this creditor. Accordingly, it remains owing.

1.p. Another delinquent debt is owed to a creditor in the amount of approximately \$4,346. Applicant explained that this was a payday loan. He started making payments on it until September of 2019. He stopped because he could no longer afford to make the payments. He believes that he currently owes about \$1,800. He plans to resume payments soon. Accordingly, it remains owing.

1.q. Another delinquent debt is owed to a creditor in the amount of approximately \$1,210. Applicant states that he was using his GI Bill but the university asserted that they never received payment, and the VA contends that Applicant received back pay to pay the debt. Applicant realizes that he owes the money. He has not made any attempts to pay it yet. (Tr. p. 59.) Accordingly, it remains owing.

1.r Another delinquent debt is owed to a creditor in the amount of approximately \$315. This was a payday loan. Applicant contends that this debt was paid in 2017 or 2018. (Tr. p. 59.) He has not provide any documentation to substantiate this pay-off. Accordingly, it remains owing.

1.s. Another delinquent debt is owed to a creditor in the amount of approximately \$100. Applicant explained that this was an overdraft charge that he paid in 2017. He has not provide any documentation to substantiate this payment. Accordingly, it remains owing.

1.t and 1.u. Two delinquent debts owed to a creditor in the amounts of \$85 and \$135, remain owing. He did not provide any documentation to substantiate any payments made to these creditors. Accordingly, they remain owing.

Applicant states that in 2016, he received financial counseling from the Navy base. He hopes to clear up his finances in order to purchase a house. He now knows how to budget his money properly. Since receiving this counseling he has decreased his expenses. To reduce his expenses, he states that he no longer has a vehicle and has cut back on cable services.

## **Guideline E - Personal Conduct**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-OIP) dated April 27, 2017. (Government Exhibit 1.) In response to Section 26 concerning his financial record, Applicant was asked a series of questions. Specifically, in the past seven years, has he had a lien placed against his property for failing to pay taxes or other debts? Is he currently delinquent on any Federal debt? The Applicant answered, "NO." This was a false response. Applicant failed to list the debts set forth under Guideline F, in subparagraphs 1.d., through 1k. above. This allegation is found against the Applicant, see discussion below.

On the same questionnaire, in Section 26 concerning his financial record, Applicant was also asked, specifically, in the past seven years has he had bills or debts turned over to a collection agency?... Has he had any account or credit card suspended, charged off or cancelled for failing to pay as agreed? The Applicant answered, "NO." These were also false responses. Applicant failed to list the debts set forth under Guideline F, in 1.i, through 1.u. above. This allegation is also found against the Applicant, see discussion below.

A letter from the Applicant's supervisor is favorable and indicates that Applicant is very responsible and trustworthy on the job and is considered to be an ideal employee. (Applicant's Exhibit A.)

## **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. According to AG ¶ 2(a), 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 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or 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 relating to the guideline 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 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.

Evidence from his most recent credit report dated October 31, 2019, reveals that Applicant remains excessively indebted to most of the creditors listed in the SOR. He admits that he has not even started to address his Federal back taxes which he believes he owes in the amount of approximately \$22,000 or \$23,000. He has failed to provide any documentary evidence to show that any of debts are being addressed. The record lacks appropriate documentation to substantiate the testimony he has provided. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangement.

Although Applicant asserts that he is making payments toward several of his debts, he has provided no receipts or proof of payment to substantiate his testimony. Other than stating that he is paying his state back taxes, he has not provided any evidence in mitigation. There is no documentary evidence to show that he has done anything to resolve his delinquent debt. He has provided no reasonable explanation for the delinquent debts, other than the fact that he has lived beyond his means, and did not for many years pay close attention to what he was spending. Furthermore, Applicant has not filed the Federal or state income tax returns in question. Nor has he even started to address his Federal back taxes. There is nothing in the record to indicate when or how his financial situation will be resolved, and whether it is likely to

recur. There is nothing in the record to show that he has control of his finances and is living within his means. He remains excessively indebted. Under the particular circumstances here, Applicant has failed to establish that he has acted reasonably or responsibly with respect to his debts. Most importantly, it has not been demonstrated that his current financial problems are under control.

### **Guideline E, Personal Conduct**

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

In response to questions about his financial history, Applicant deliberately failed to reveal his delinquent debts on his security clearance application. His credibility is in question. His conduct does not show honesty, integrity, good judgment or reliability. These are necessary characteristics of an individual who has been entrusted with the national secrets. Given the large number of delinquent debts Applicant has, and the sizable amounts owed on the debts, Applicant knew or should have known that these debts remained owing when he completed his security clearance application in 2017 and he should have revealed them to the Government. If for some reason he did not know, he should have checked his credit report before completing the application. The fact that he did not acknowledge any of his debts in response to these questions on his application, shows that he was either extremely careless, or he deliberately concealed the information from the Government, which in either case indicates questionable judgment, unreliability, and untrustworthiness, characteristics of an individual who does not meet the qualifications for access to classified information.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Applicant failed to provide documentary evidence to support his testimony. There is insufficient documentation in the record to show that Applicant has made any effort to resolve or work toward resolving his delinquent debt. Accordingly, Applicant has not demonstrated that he is financially responsible or sufficiently truthful or trustworthy to access classified information.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and Personal Conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.u.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge