



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



In the matter of:)	
)	
)	ISCR Case No. 20-01266
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2021

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern generated by his delinquent debts. Clearance is denied.

Statement of the Case

On July 31, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. In an undated response, Applicant answered the SOR, admitting all of the allegations. He requested a decision without a hearing. On December 14, 2020, Department Counsel prepared a File of Relevant Materials (FORM). On January 14, 2021, Applicant received a copy of the FORM, and he was instructed to file

any objections, or to supplement the file within 30 days of receipt. He did not file a response. Subsequently, on April 12, 2021, the case was assigned to me.

Findings of Fact

Applicant is a 49-year-old single man. He graduated from high school in 1989. Shortly after graduating, he enlisted in the U.S. Navy, where he served until May 1990, receiving a general discharge under honorable conditions. (Item 3) He is a graphic designer who has been working with his current employer, a federal contractor, since 2019. (Item 3 at 12-14)

Applicant failed to file his federal and state income tax returns from 2014 to 2018. As of December 2020, these tax returns remain unfiled and the corresponding debts remain unpaid. (Item 2) In addition, as of December 2020, Applicant had approximately \$20,000 in delinquent consumer debt. (Item 2)

Applicant attributes his financial problems to a home foreclosure in 2013, and periods of unemployment from February and June of 2018, and from March and June of 2019. (Item 3 at 15; Item 7 at 1) He provided no evidence of any steps that he has taken to either satisfy his debts, or develop payment plans, nor has he provided evidence that he has filed his income tax returns, or made any income tax payments.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18, as follows:

Failure or inability 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 An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s extensive delinquent debts generates security concerns under AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s failure to file his federal or state income tax returns, or to pay his federal or state income taxes, as required, triggers the application of AG ¶ 19(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.”

The following mitigating conditions are potentially applicable:

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, a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

Applicant's bouts of unemployment may have exacerbated his financial problems. Conversely, he already was in debt and behind on his income tax filings and payments by the time he experienced his first period of unemployment in 2018. Moreover, he provided no evidence of any steps that he has taken to rehabilitate his financial situation. Under these circumstances, none of the mitigating conditions apply. I conclude Applicant has failed to mitigate the financial considerations security concern.

Whole-Person Concept

I considered the whole-person concept factors when I evaluated the disqualifying and mitigating conditions under Guideline F, and they do not warrant a favorable conclusion.

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 – 1.bb:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge