



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



In the matter of:)	
)	
)	ISCR Case No. 21-02302
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to provide any evidence that he is working towards satisfying his delinquent debts. Under these circumstances, his application for a security clearance is denied.

Statement of the Case

On December 15, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline B, foreign influence, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA 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. On March 21, 2022, Applicant answered the SOR. He admitted all the allegations except subparagraph 2.a, and he requested a decision without a hearing. On May 19, 2022, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government’s arguments against Applicant’s

security clearance suitability. The FORM contained 15 attachments, identified as Items 1 through Item 15 in support of its decision. Also, Department Counsel withdrew the Guideline B allegation.

Applicant received a copy of the FORM on May 19, 2022. He was given 30 days to file a response. Applicant did not file a response, whereupon the case was assigned to me on September 21, 2022, after having previously been assigned to another administrative judge.

Findings of Fact

Applicant is a 48-year-old married man with six children, ranging in age from 5 to 29. Two previous marriages ended in divorce. (Item 1) Applicant is a high school graduate and a veteran of the U.S. Army, serving initially from April 1997 to July 2000. After 9/11, Applicant re-enlisted and served from October 2001 through February 2004, (Item 3 at 25-28; 30-36) All of his service is characterized as honorable. (Item 3 at 12, 22-23)

In 1994, Applicant was charged with "Hot Check/Personal services," found guilty, and sentenced to five months in prison, as alleged in SOR subparagraph 1.a. (Item 10 at 3) In 1999, Applicant was investigated for the offenses of forgery, false swearing, larceny of U.S. Mail, and larceny of Government mail, as alleged in SOR subparagraph 1.b. (Item 8 at 4) This investigation was precipitated after the payee was issued a check, but did not receive it. She contacted the maker of the check, the U.S. Treasury. Subsequently, the U.S. Treasury placed a trace on the check, which revealed that it had been deposited in Applicant's account. (Item 8 at 5) Although Applicant denied the allegations and was never prosecuted, an investigation concluded that there was probable cause establishing all the offenses. (Item 8 at 4)

Between 2002 and 2014, Applicant incurred approximately \$9,500 of delinquent debt, including two judgments, totaling approximately \$7,800, as alleged in SOR subparagraphs 1.c. and 1.d, and a tax warrant, totaling approximately \$2,700, as alleged in subparagraph 1.e. In 2014, Applicant filed for Chapter 7 bankruptcy protection, as alleged in SOR subparagraph 1.f. (Item 8) Later that year, the court discharged approximately \$48,000 in delinquent debt. (Item 9 at 8) The judgment alleged in SOR subparagraph 1.d was discharged through the bankruptcy, and Applicant satisfied the tax warrant in 2015. (Item 2 at 1) It is unclear from the record whether the judgment alleged in SOR subparagraph 1.c was discharged in the 2014 bankruptcy.

Since the bankruptcy discharge, Applicant has incurred approximately \$85,000 of additional delinquent debt alleged in SOR subparagraphs 1.g through 1.m. These debts include subparagraph 1.g, a \$29,632 child support delinquency, subparagraph 1.h, a \$14,682 medical account, delinquent credit card accounts totaling \$624, as alleged in subparagraphs 1.i. and 1.j, and three automobile-related debts, totaling approximately \$40,000, alleged in subparagraphs 1.k through 1.m.

The delinquent child support alleged in SOR subparagraph 1.g, is for his youngest child who was born in 2016 after a brief extramarital relationship. Applicant did not know that he had this child until the child's mother informed him in 2020, and the delinquency represents unpaid child support retroactive to the child's birth. (Item 15 at 2) The automobile-related debts consist of the deficiencies remaining from two repossessions in 2021, as alleged in subparagraphs 1.k and 1.l, and a delinquent car payment, as alleged in subparagraph 1.m. Applicant provided no evidence that he was satisfying any of the SOR debts, or that he had made payment arrangements for any of the SOR debts. In his answer, he stated that he "admit[s] [he] has not made sound financial decisions [sic] in [his] life, but [his] commentment [sic] to this country has always stayed strong." (Item 1 at 4)

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

Under this concern, "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." (AG ¶ 18)

Applicant satisfied the tax warrant, referenced in SOR subparagraph 1.e, eight years ago. I resolve subparagraph 1.e in his favor. The remainder of the allegations are supported by reliable evidence and trigger the application of AG ¶ 19(a) "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant's tax warrant in 2011 triggers AG ¶ 19(f), ". . . failure to pay annual Federal state, or local income tax as required."

Applicant acknowledged that he has problems making good financial decisions, but provided no evidence that he is seeking help with this problem, such as financial counseling. Moreover, he provided no evidence that he has satisfied any of the SOR debts, and the fact that his debts recurred after a bankruptcy discharge of more than \$48,000 indicates that the likelihood of continuation or recurrence of his financial problems remains unacceptably high. Under these circumstances, none of the AG ¶ 20 mitigating conditions apply, and Applicant has failed to mitigate the financial considerations security concerns.

Whole-Person Concept

I considered the whole-person factors in my analysis of the disqualifying and mitigating conditions, 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.m:	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