



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



In the matter of:)
)
) ISCR Case: 15-04605
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

August 14, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 30, 2014, Applicant submitted a security clearance application (SF-86). On March 8, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 September 1, 2006.

Applicant answered the SOR on June 30, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On July 29, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six items, and was received by him on August 9, 2016. The FORM notified Applicant that he had an

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant failed to respond to the FORM. DOHA assigned the case to me on July 11, 2017. Items 1 through 6 are admitted into evidence. The Government's items will now be referred to as Government Exhibits.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 45 years old and married. He has a Bachelor's degree. He holds the position of Communications Manager for a defense contractor. He is seeking to obtain a security clearance in connection with his employment. (Government Exhibit 3.)

Applicant served on active duty in the United States Air Force from November 1992 to May 2008, when he was honorably discharged. There was a short gap in his services from September 2002 to May 2003 when he was a student at a University and participated in the ROTC Air Force program. Applicant began working for his current employer in May 2008. (Government Exhibit 3.)

Applicant has two delinquent debts totaling approximately \$21,000. He admits both debts. Applicant is indebted to a creditor for a delinquent credit card account that was charged off in the approximate amount of \$18,294. He is also indebted to a creditor for a delinquent department store credit card account that was charged off in the approximate amount of \$3,227. (Applicant's Answer to SOR)

Applicant explained that in April 2011, he experienced financial setbacks when his home was flooded and destroyed because of a tropical storm. His family lost nearly everything. In November of that same year, his wife lost her job. These events occurring so close in time and caused the Applicant serious financial strain. Although Applicant had flood insurance coverage, it took a long time to be compensated, as many others in his area had experienced losses and had also filed claims. While waiting to be compensated, Applicant used two of his credit cards to cover the costs

and expenses as he tried to rebuild his home and the lives of his family. Applicant contends that he has set up payment plans with both creditors and payments are taken out of his checking account each month. He submits that he has not missed one payment, and the balances on the accounts have been reduced. Applicant also adds that he has more than \$150,000 in two investment portfolios through his employer that he could use to pay off his outstanding debts if necessary. Applicant has failed to provide any documentary evidence to substantiate any payment agreements he has made or payments he is or has been making toward the debts. (Applicant's Answer to SOR.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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;

Two of Applicant's credit card accounts totaling approximately \$21,000 remains outstanding. There is no documentary evidence in the record to show that Applicant has or is paying the debts. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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;

Devastation from the storm that flooded Applicant's home, and his wife's loss of employment were obviously unforeseen difficult circumstances that were completely beyond his control. These unexpected events caused financial difficulties. Hopefully these circumstances will not recur. However, Applicant claims that he has set up a payment plan that he is following to resolve the delinquent credit card debts listed in the SOR. He has failed to submit any documentation to substantiate this. Mere claims of payment by Applicant are not enough to carry his burden of proof. There are no clear indications that his financial issues are under control. The record does not establish clear mitigation of financial security concerns under the provisions of AG ¶¶ 20(a), 20(b) and 20(d).

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who states that he took reasonable and effective action to resolve the delinquent debts listed in the SOR. Why he failed to submit documentation to support his contention is a mystery. The likelihood that financial problems of this sort will recur the same way is minimal; however, without more in the record, specifically what he has paid and what he still owes, it is impossible to determine whether he is now in control of his finances. Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not met his burden to mitigate the security concerns arising under the guideline for financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.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 and a security clearance. National security eligibility is denied.

Darlene Lokey Anderson
Administrative Judge