



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



In the matter of: )  
)  
) ISCR Case: 15-04733  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel  
For Applicant: Greg R. Garner, Esquire

08/03/2017  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant encountered a number of financial issues in 2014, causing him to be temporarily unable to pay his mortgage. He obtained a loan modification in 2015 and has since made all payments as required. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

**Statement of Case**

On June 21, 2011, Applicant submitted a security clearance application (SF-86). On February 23, 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, through his counsel, answered the SOR on March 19, 2016. He denied both of the SOR allegations concerning delinquent debts, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On June 24, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on June 28, 2016, and received by him on July 17, 2016.<sup>1</sup> 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, through his counsel, responded to the FORM on June 20, 2016. He did not object to Items 1 through 7, which are admitted into evidence. Applicant submitted additional information in his FORM response, to which Department Counsel had no objection. That evidence is also admitted and will be considered along with the additional explanations and analysis provided by Applicant's counsel in the response, which is marked Exhibit (AE) A. DOHA assigned the case to me on May 4, 2017.

The SOR and FORM in this case were 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.

Due to the passage of time since Applicant responded to the FORM, and the implementation of the new SEAD 4 AG during that period, I notified both counsel on June 26, 2017, that I would reopen the record for fifteen days in order to permit submission of any desired new evidence or argument. In particular, I noted that anything addressing Applicant's subsequent adherence to the payment requirements of his July 2015 modified mortgage loan agreement would be pertinent under the new language of the mitigating factor in AG ¶ 20(d), which added the language, "and is adhering to." On July 10, 2017, Applicant's counsel responded with evidence demonstrating that Applicant remains in good standing on his modified mortgage loan payments. Department Counsel had no objection to this evidence, which is marked AE B and admitted together with the associated email correspondence.

I considered the previous eligibility guidelines, as well as the new SEAD 4 AG, 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 currently effective SEAD 4 AG.

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<sup>1</sup> The FORM was mistakenly mailed to Applicant instead of his counsel by a former DOHA legal assistant, who did not realize that Applicant was represented.

## **Findings of Fact**

Applicant is 41 years old. He is married, with no children. He earned an associate's degree in 1999, a bachelor's degree in 2002, and a master's degree in 2007. He has worked for major defense contractors since June 2002, and has held a security clearance without incident during that employment. He honorably served on active duty in the U.S. Navy from July 1993 to August 1996, and in the U.S. Navy Reserve from then until August 2006. (Item 4.)

Applicant and his wife encountered a short-term financial hardship from April 2014 to January 2015. This hardship was caused by unforeseen family medical issues; initiation of payments to correct a mistake on their 2012 Federal income tax return; the end of deferment on student loans Applicant incurred while pursuing his Ph.D. degree; and the provision of financial support to his brother and mother to relieve temporary severe hardships. Details of these circumstances were provided in AE A.

As a result of these issues, Applicant was temporarily unable to continue making timely payments on his home mortgage loan. He also inadvertently missed a payment on a credit card account, resulting in a \$104 delinquency. In his answer to the SOR, he provided proof that he was current on that credit card account, and had obtained a mortgage loan modification agreement that brought that debt back into good standing. (Item 3.)

On July 10, 2017, Applicant's counsel provided documentation showing that Applicant has continued to make all required payments under the terms of his modified mortgage loan agreement. (AE B.) The modification went into effect on July 14, 2015, and called for monthly payments of \$886.37 toward principal, interest, and escrow funds starting August 1, 2015. (Item 3.)

## **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* Executive Order 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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was temporarily unable to meet his mortgage payments in 2014 and 2015, creating a brief history of not meeting financial obligations. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three 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, or 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.

Applicant's financial issues arose from a series of unforeseen problems that combined to create a temporary inability to make his mortgage payments in 2014, all of which have been resolved. He successfully negotiated a mortgage loan modification agreement in 2015, and has made all payments under that contract. His credit card account was only temporarily delinquent due to one inadvertently missed monthly payment.

Applicant acted responsibly under unforeseen difficult circumstances that were largely beyond his control, and there are clear indications that his financial issues are resolved. The record establishes 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 took reasonable and effective action to resolve the financial issues created a series of unforeseeable problems in 2014. The likelihood that financial problems will recur is minimal; and the potential for pressure, coercion, or duress is eliminated by the resolution of Applicant's formerly outstanding debts. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He fully 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: FOR APPLICANT

Subparagraphs 1.a and 1.b: 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 Applicant national security eligibility and a security clearance. National security eligibility is granted.

DAVID M. WHITE  
Administrative Judge