



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



In the matter of:)
)
) ISCR Case No. 15-05023
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esquire, Department Counsel
For Applicant: *Pro se*

August 18, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is indebted to ten creditors in the approximate amount of \$12,854. He failed to produce documentation to show he resolved any of his delinquencies to the satisfaction of his creditors. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On October 24, 2014, Applicant submitted a security clearance application (SF-86). On December 31, 2015, 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 (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 Guidelines for Determining Eligibility for Access to Classified Information*.

Applicant answered the SOR on June 29, 2016. (Item 1.) 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 four Items, was mailed to Applicant on July 29, 2016, and 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 did not respond to the FORM within the 30 days allotted, which ended September 8, 2016. DOHA assigned the case to me on August 2, 2017. Items 1 through 4 are admitted into evidence.¹

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 security clearance 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 security clearance 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 37 years old and married. He has worked for his current employer, a government contractor, since October 2014. He served in the Marine Corps from 2001 to 2005, and in the Army from 2005 to 2013. He received a general discharge under honorable conditions as a result of a driving under the influence conviction. He was unemployed from April 2013 to September 2013. (Item 2.)

Applicant was alleged to be indebted to ten creditors in the approximate amount of \$12,854. Applicant admitted to the debts identified in SOR ¶¶ 1.a through 1.j. He noted "some have been resolved due to credit repair." All of Applicant's debts appear in the credit report dated November 13, 2014. (Item 4.) Applicant attributed his delinquencies to his unemployment after his discharge from the Army and his wife's lay-off in December 2014. (Item 3.)

¹ Because Applicant did not respond to the FORM or affirmatively waive any objection to Item 3, I will consider only those facts in Item 3 that are not adverse to Applicant unless they are also contained in other evidence or included in the admissions in his answer to the SOR.

Applicant was indebted on a collection account in the amount of \$429, as alleged in SOR ¶ 1.a. This credit card account was opened in April 2013. It was charged off by the creditor in November 2014. Applicant stated that he intended to contact this creditor, but failed to produce any documentation to show he took any actions to resolve this debt. (Item 3.) It remains unresolved. (Item 4.)

Applicant was indebted on a collection account in the amount of \$800, as alleged in SOR ¶ 1.b. This medical account was opened in August 2014. He believed that the debt should have been covered by the Department of Veterans Affairs, however, he failed to produce any documentation to support his claim. It was reported as delinquent in October 2014 and appears in the 2016 credit report. It remains unresolved. (Item 3; Item 4.)

Applicant was indebted on a collection account in the amount of \$5,060, as alleged in SOR ¶ 1.c. This credit card account was opened in April 2011. It became delinquent in 2013. It was charged off by the creditor in October 2014. Applicant stated that he intended to contact this creditor, but failed to produce any documentation to show he took any actions to resolve this debt. (Item 3.) It remains unresolved. (Item 4.)

Applicant was indebted on a collection account in the amount of \$416, as alleged in SOR ¶ 1.d. This “noteloan” account was opened in April 2012. It became delinquent in 2013 and was charged off by the creditor in October 2014. Applicant claimed that his wife paid this debt. However, he failed to produce documentation to support his claim. It remains unresolved. (Item 3; Item 4.)

Applicant was indebted on a collection account in the amount of \$458, as alleged in SOR ¶ 1.e. This debt became delinquent in June 2014. Applicant claimed that this debt was paid. However, he failed to produce documentation to support his claim. It remains unresolved. (Item 3; Item 4.)

Applicant was indebted on a collection account in the amount of \$3,793, as alleged in SOR ¶ 1.f. This automobile loan was opened in January 2013. It was reported delinquent in October 2013. Applicant claimed that the vehicle was repossessed and sold for more than he owed on this account. However, he failed to produce documentation to substantiate his claim. It has been charged off by the creditor and remains unresolved. (Item 3; Item 4.)

Applicant was indebted on a collection account in the amount of \$150, as alleged in SOR ¶ 1.g. This account was opened in January 2008. It has been delinquent since August 2008. It is unresolved. (Item 4.)

Applicant was indebted on a collection account in the amount of \$569, as alleged in SOR ¶ 1.h. This account was opened in February 2008. It became delinquent in September 2014. It is unresolved. (Item 4.)

Applicant was indebted on a collection account in the amount of \$936, as alleged in SOR ¶ 1.i. This debt was for a telephone service account opened in August 2014. It became delinquent in October 2014. Applicant's credit report reflects that he disputed this information, but nothing further in that regard. It remains unresolved. (Item 4.)

Applicant was indebted on a collection account in the amount of \$243, as alleged in SOR ¶ 1.j. This debt was for a "joint contractual liability" that has been delinquent since October 2014. It is unresolved. (Item 4.)

Applicant submitted no evidence of financial counseling, or of budget estimates from which to analyze his current financial situation. No character references were submitted to describe Applicant's judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 useful 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15, states 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 who seeks access to classified information enters 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 Executive Order 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 *a/so* 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 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 is indebted to ten creditors in the approximate amount of \$12,854. He has documented no action to resolve these delinquencies. The 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, 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.

The evidence does not establish mitigation under AG ¶ 20(a). Applicant's SOR-alleged financial problems have been ongoing since 2013, are unresolved, and continue to date.

The evidence establishes partial mitigation under AG ¶ 20(b). Both Applicant's and his wife's unemployment were conditions beyond their control. However, he did not provide evidence that he acted responsibly under the circumstances with respect to his debts, which is necessary for full mitigation under this condition. He has been fully employed since October 2014, yet he has not documented steps taken to resolve his SOR-listed delinquencies. Mitigation under AG ¶ 20(b) is not fully applicable.

Applicant has not established a history of responsible action with respect to his delinquent debts. There is no discernable evidence of a good-faith effort to repay those debts in the record. The evidence does not establish mitigation under AG ¶ 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 individual who is accountable for the decisions and choices that led to his financial difficulties. He failed to demonstrate a basis for finding current good judgment, or permanent behavioral change, concerning his continuing pattern of financial irresponsibility. His ongoing delinquent debts establish continuing potential for pressure, coercion, or duress.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that he did not meet his burden to mitigate the security concerns arising from his 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 through 1.j:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge