



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



In the matter of:)
)
) ISCR Case No. 15-05243
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.¹

August 4, 2017

Decision on Remand

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on eight debts, in a total exceeding \$16,000. He remains indebted to three creditors in the amount of \$11,252. In 2003, he filed Chapter 13 bankruptcy, which was discharged in 2007. Applicant failed to introduce documentation to show that his history of financial delinquencies does not cast doubt on his current judgment. Eligibility for access to classified information is denied.

Statement of the Case

On August 5, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On March 23, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel*

¹ Applicant was represented by Ryan Nerney, Esq., in his appeal. However, Applicant appeared *Pro se* at hearing.

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on June 16, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on September 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 13, 2016, scheduling the hearing for December 20, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified and submitted two exhibits (AE) marked AE A and AE B. Department Counsel had no objections to AE A and AE B, and they were admitted. The record was left open for receipt of additional documentation. On December 29, 2016, Applicant submitted additional exhibits via mail and fax, marked AE C through AE L. Department Counsel had no objections to AE C through AE L, and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on January 9, 2017. I issued a decision on April 28, 2017, denying Applicant's eligibility for access to classified information.

Applicant appealed my decision. On July 11, 2017, the decision was remanded to me by the DOHA Appeal Board. The Board remanded the case to me for the limited purpose of correcting errors pertaining to the findings of fact concerning the debts alleged in SOR ¶¶ 1.a and 1.c; to correct the amount of the debt alleged in 1.e; and to then issuing a new decision based on my revised findings. Based upon a review of the pleadings, exhibits, and testimony, to include corrected findings with respect to SOR ¶¶ 1.a, 1.c, and 1.e, eligibility for access to classified information is denied.

Procedural Issue

On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position."² The National Security Adjudicative Guidelines (hereinafter "adjudicative guidelines" or "AG"), which are found at Appendix A to SEAD-4, are to be used in all security clearance determinations made on or after June 8, 2017.³ In light of this explicit direction and absent lawful authority to the contrary, I have applied the adjudicative guidelines to this remanded decision.⁴ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).⁵

² SEAD-4, ¶ B, *Purpose*.

³ SEAD-4, ¶ C, *Applicability*.

⁴ Nonetheless, I have considered the previous version of the adjudicative guidelines and my ultimate decision in this case would have been the same.

⁵ See also ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Board stated the following, "Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.")

Findings of Fact

Applicant is 47 years old. He has been an employee of a government contractor since 2014. Applicant is married to his second wife since January 2014. His previous marriage lasted from 1990 to 2013. He has three children; two of which are adults and one is a minor. He served in the Army for 23 years, and honorably retired in July 2013. He achieved the rank of Master Sergeant, E-8. (GE 1; Tr. 19-21.)

As listed in the SOR, Applicant was alleged to be delinquent on eight debts, in a total exceeding \$16,000. The SOR also alleged he filed Chapter 13 bankruptcy in February 2003, which was discharged in December 2007. Applicant admitted SOR allegations 1.b, 1.e, 1.g, and 1.i. He denied subparagraphs 1.a, 1.c, 1.d, 1.f, and 1.h. His debts are identified in the credit reports entered into evidence. (Answer; GE 4; GE 5; GE 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributes his current financial delinquencies to events beyond his control. His wife was hospitalized and could not work due to an unstated injury at an undisclosed time. He also was unemployed for a year from July 2013 to August 2014, after his retirement from the Army in 2013. He relied on credit cards during that time to pay his bills and meet his monthly expenses. (GE 1; Tr. 33-36.)

Applicant was indebted to a medical creditor on a collection account in the amount of \$12, as alleged in SOR ¶ 1.a. Applicant testified that he paid this debt. (GE 5; Tr. 24-25.) GE 6 reflects this debt is paid as of August 4, 2016. This debt is resolved.

Applicant was indebted on a charged-off account in the approximate amount of \$8,097, as alleged in SOR ¶ 1.b. Applicant testified this debt was for a vehicle he purchased in his name in 2007. However, the credit report reflects this account was opened in May 2010. (GE 5; GE 6.) He claimed this debt was assigned to his ex-wife in his divorce settlement agreement. She stopped paying for the vehicle and it went into collections. He stated, "I am admitting it, and I'm going to pay it." (Tr. 24, 26-27.) However, he documented no actions taken to fulfill this promise and did not provide copies of the divorce decree. This debt is unresolved.

Applicant was indebted on a charged-off account in the approximate amount of \$1,115, as alleged in SOR ¶ 1.c. This debt was for a credit card that became delinquent in 2012. Applicant stated in his post-hearing documentation that "Final payment was made on 12/31/14 for a total of \$1,115.56." (GE 4; AE D; AE G; Tr. 27.) GE 6 reflects this debt is paid. This debt is resolved.

Applicant was indebted on a collection account in the approximate amount of \$349, as alleged in SOR ¶ 1.d. Applicant stated in his post-hearing documentation that "Final payment was made on 12/18/14 for a total of \$400.28." (AE D; AE G; Tr. 27-28.) Applicant presented a letter from the collection agent that verified this account was paid in full. It is resolved. (GE 6; AE H.)

Applicant was indebted on a collection account in the approximate amount of \$1,523, as alleged in SOR ¶ 1.e.⁶ Applicant's credit report of August 2014 reflects this account was opened January 2013. It became delinquent in July 2014. Applicant admitted this debt in his Answer to the SOR and indicated, "contacting company to set up payment arrangements." However, at hearing he testified he did not know what this debt was for. He has not tried to contact the creditor. It is unresolved. (GE 4 at page 5; Tr. 28-30.)

Applicant was indebted on a charged-off account in the approximate amount of \$3,177, as alleged in SOR ¶ 1.f. Applicant stated in his post-hearing documentation that "Final payment was made on 2/13/15 for a total of \$2,910.56." (AE D; AE G; Tr. 30-31.) Applicant presented a letter from a collection agent for this creditor, which showed this debt as "settled." (AE J.) It is resolved.

Applicant was alleged to be indebted on a collection account in the approximate amount of \$1,632, as alleged in SOR ¶ 1.g. Applicant testified this debt was his "son's credit card that I had to co-sign for." Applicant testified that the bank no longer exists and he does not know who currently holds the collection account. It is unresolved. (GE 4 at 9; Tr. 31-32.)

Applicant was alleged to be indebted on a collection account in the approximate amount of \$288, as alleged in SOR ¶ 1.h. Applicant stated in his post-hearing documentation that "Final payment was made on 11/21/14 for a total of \$289." (AE D; AE G; Tr. 32.) Applicant presented a letter from a collection agent for this creditor, which showed this debt as "settled-in-full." (AE I.) It is resolved.

Applicant filed Chapter 13 bankruptcy in February 2003. He identified \$37,387 in liabilities and \$14,300 in assets at the time he filed for Chapter 13. He listed delinquent credit card debt totaling over \$10,000 as part of his liabilities. His bankruptcy was successfully discharged in December 2007. He attributed bankruptcy filing to "financial mismanagement on both our parts," referring to himself and his ex-wife. In August 2008, he received a warning from the Department of the Army Central Personnel Security Clearance Facility that informed Applicant that, "subsequent unfavorable information may result in the suspension of your security clearance." (GE 2; GE 3; Tr. 22, 32-33.)

Applicant provided no household budget showing monthly household expenses, other than that found in his 2003 bankruptcy filing. (GE 2.) He testified that he lives within his means and does not buy extravagant things. However, in May 2016, he financed a \$19,000 motorcycle despite having multiple unresolved debts. Applicant has not attended any financial counseling, other than the counseling presumably required to file his Chapter 13 bankruptcy petition. (Tr. 34-37.)

Applicant presented letters of recommendation from four individuals who know him. Applicant's father-in-law opined that Applicant has "exceptional integrity and honor." His city councilman wrote that Applicant is "dependable, level headed,

⁶ The Decision issued April 28, 2017, incorrectly listed the amount of this debt as \$8,097. It was a typographical error and the correct amount alleged is \$1,523.

hardworking, honest, patriotic, and principled.” A director with whom Applicant works indicated Applicant is a team player and is always “willing to go the extra mile.” A friend and co-worker of Applicant’s indicated Applicant is “very respectful of privacy, classified information, rules and restrictions.” (AE F.) Applicant’s counseling records and performance plans shows that he meets all requirements and is a valued employee. (AE K.) He has successfully completed numerous training courses related to his field of work and security training. (AE L.)

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 concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial indebtedness documented by the credit reports in evidence. He failed to document he resolved three of his eight delinquencies. Further, he has a history of financial delinquencies since at least 2003, which caused him to file Chapter 13 bankruptcy that year. While that bankruptcy was discharged, Applicant failed to change his practice of spending funds that he did not have when he faced financial challenges. The evidence raises security concerns under all of these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems are ongoing. He has a long history of delinquencies. He utilized his 2003 Chapter 13 bankruptcy to resolve \$37,387 of debt, including approximately \$10,000 in credit card debt, when it was discharged in 2007. However, he again defaulted on consumer debts, as documented on his 2014 credit report. Three of Applicant's alleged eight delinquent accounts still remain unresolved. Yet, he recently procured a loan for a \$19,000 motorcycle. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed his recent delinquencies to his unemployment and his wife's hospitalization. These are circumstances beyond his control, although the duration of his wife's hospitalization is unknown. However, he failed to establish that he has acted reasonably or responsibly with respect to his debts since becoming fully employed with a government contractor in 2014. He has not demonstrated that he addressed his remaining three debts in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of recent financial counseling. Further, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶¶ 20(c) or (d) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any dispute or provide evidence of actions to resolve the issue. Applicant has

not provided evidence of any formal dispute or a basis for one with regard to any of his debts. Mitigation under AG ¶ 20(e) has not been established.

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.

Under 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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant performs well at work and is trusted by those who wrote him reference letters. However, three of Applicant's debts remain unresolved. While he was given the opportunity to document the current status of his debts, he failed to produce evidence of any actions on his remaining three delinquent accounts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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 I. Goldstein
Administrative Judge