



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



In the matter of:)
)
) ISCR Case: 15-05878
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

June 19, 2017

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of Case

On August 21, 2014, Applicant submitted a security clearance application (SF-86). On May 12, 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 6, 2016. He denied all of the SOR allegations concerning his bankruptcy filings and delinquent debts, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On July 14, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was

mailed to Applicant on July 18, 2016, and received by him on July 22, 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 May 10, 2017. Items 1 through 5 of the FORM are admitted into evidence.

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. He is married with two adult children. He has a high school diploma. He is employed with a defense contractor as a Pipe Fitter. He is seeking to obtain a security clearance in connection with his employment.

Guideline F- Financial Considerations

The Government alleges that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified seven debts totaling approximately \$22,000. Applicant admitted each of the allegations in the SOR. He states that some debts are duplicates: allegations 1(a) and 1(g) are the same debt; and allegations 1(c) and 1(e) are the same debt. Credit reports of Applicant dated January 22, 2016; and August 29, 2014, confirm this indebtedness. (Applicant's Exhibits 4 and 5.)

During his subject interview, Applicant stated that his financial problems began about ten years ago when he had to take a lower paying job after he lost his employment due to downsizing. From 1995 until 2015, he was employed with Employer A. He received a severance package from Employer A when he left the job. He was then hired by Employer B where he has worked since April 2015. For other reasons, his wife was also required to accept less pay on her job. This sudden loss of household income initially caused Applicant to fall behind on his financial obligations. His family

also experienced some medical issues resulting in periods of unpaid leave. As a result the following debts became seriously delinquent and owing.

1(a) and 1(g) A judgment was filed against the Applicant in May 2015 in the approximate amount of \$2,094. Applicant states that he has set up a payment plan and is paying \$150 monthly toward the debt. He has provided documentation showing that the debt has been reduced to \$443. Applicant indicates that the debt will be paid in full by August 2017. (Answer to SOR.)

1(b) A delinquent cable bill was placed for collection in the approximate amount of \$403. Applicant states that he has contacted the creditor to set up a repayment plan of \$50 monthly. Applicant has provided no documentary evidence to substantiate this agreement.

1(c) and 1(e) A delinquent debt was placed for collection in the amounts of \$247 and \$987. Applicant provided a document showing the debt has been paid. (Answer to SOR.)

1(d) A delinquent credit card debt was placed for collection in the amount of \$1,464. Applicant claims this debt was settled in 2013 for \$1,200. Applicant has provided no documentary evidence to substantiate this payment.

1(f) A delinquent mortgage account was placed for collection in the amount of \$10,956. Applicant claims that he is in negotiations with the creditor to set up a payment arrangement to resolve the debt. Applicant has provided no documentation to substantiate this.

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 *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 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; and
- (c) a history of not meeting financial obligations.

Admittedly, since April 2015, Applicant's household earnings were reduced. However, his financial problems have existed for the past ten years. He has resolved two debts, but the others remain owing. He has not sufficiently addressed his delinquent debts, nor has he shown systematic proof of payment toward these of his 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 one condition in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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.

Applicant's financial problems are ongoing. He has a long history of delinquencies that existed even before his pay was reduced. He has not resolved all his debts, and has not shown any evidence of paying them. There may, in fact, have been circumstances beyond his control that contributed to his financial indebtedness, however, without further documentation of these events to prove significant unexpected hardship, and a showing that he acted reasonably under the circumstances, Applicant has failed to mitigate this concern. Furthermore there are no indications that his financial issues are under control. The record does not establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(b).

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 did not take reasonable and effective action to resolve his financial indebtedness. He remains excessively indebted. There are no clear indications that his financial problems are being resolved or are under control.

Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. For all of 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
Subparagraphs 1.a., 1.c.:	For Applicant
Subparagraphs 1.b., 1d., and 1f.:	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