



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



In the matter of:

ISCR Case No. 15-06239

Applicant for Security Clearance

Appearances

For Government: Philip J. Katauskas, Department Counsel

For Applicant: *Pro se*

June 19, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 25, 2015, Applicant submitted a security clearance application (SF-86). On March 16, 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 May 11, 2016. He admitted the sole allegation in the SOR allegations concerning his delinquent debt, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On June 24, 2016. Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 7 Items, was mailed

to Applicant on June 24, 2016, and received by him on June 29, 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 June 5, 2017. Items 1 through 7 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 35 years old and married. He has a high school diploma and some college. He is employed with a defense contractor as a Control Center Specialist. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged 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 one debt totaling approximately \$26,002. Applicant admits the debt. (Government Exhibit 4.) The debt is a delinquent credit card that Applicant opened in about 2001. (Government Exhibit 6.) From 2001 to 2012, Applicant charged on the card. A credit report of Applicant dated April 15, 2015, reflects that the debt remains outstanding. (Applicant's Exhibit 7.)

Applicant was unemployed from October 2000 until July 2014 due to his disability, and lived with his parents. At the age of sixteen, Applicant was diagnosed with lupus. During his fourteen-year period of unemployment he underwent various treatments and surgeries, including a kidney transplant, for the disease. Applicant received disability benefits/social security during this time frame, however, his parents provided most of his financial support. Applicant was current with his payments on his credit card until January 2012. At that point, he states that he was recovering from surgeries, and did not have the money to pay the bill. Applicant began working full time in August 2014. Since then, he has done nothing to resolve his delinquent credit card

debt. There has been no evidence presented that demonstrates that Applicant has taken any steps to resolve the debt. He states that, "it remains delinquent until I have the necessary fund to pay that debt off." (Government Exhibit 4.)

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 to be used 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. 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 access to classified information 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.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain 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 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 EO 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 *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 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 or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant is delinquently indebted in the amount of \$26,002. His actions demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating condition under the Financial Considerations is potentially applicable under AG ¶ 20.

(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), and the individual acted responsibly under the circumstances.

It is recognized that Applicant's medical condition prevented him from employment for fourteen years. During that period, he received disability benefits. He

also charged up his credit card to excessive amount and could no longer afford to make the payments on it in 2012. Since 2014, Applicant has been working full time, but has not addressed his delinquent credit card debt in any form or fashion. There is no evidence that he has acted responsibly under the circumstances. His inaction is an action which casts doubt on his current reliability, trustworthiness, or good judgment.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated Financial Considerations security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge