



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



In the matter of:

ISCR Case No. 15-06464

Applicant for Security Clearance

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

June 19, 2017

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On December 8, 2014, Applicant submitted a security clearance application (SF-86). On May 1, 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 16, 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 6 Items, was mailed to Applicant on July 25, 2016, and received by him on July 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 responded to the FORM on August 23, 2016 and submitted a three page exhibit, admitted without objection and marked as Applicant's Exhibit A. Applicant did not object to Items 1 through 6, and were 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 42 years old. He is married and has two children. He has a high school diploma and some college. He is employed with a defense contractor as a Quality Assurance/Compliance Inspector. 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 seven debts totaling approximately \$83,000. Applicant admitted each of the allegations in the SOR. (See Answer) Credit Reports of Applicant dated March 21, 2016 and December 18, 2014, confirm this indebtedness. (Applicant's Exhibits 4 and 5.) He has been working for his current employer since September 2014.

Applicant's SF-86 indicates that he served in the United States Air Force from July 1997 to August 2014 and received an honorable discharge. It also indicates that he received two Article 15's while in the military. In August 2009, he was charged with violating a technical order, and was suspended and forfeited \$2,000. In September 2011 he was again charged with violating a technical order, and was reduced in rank from E-6 to E-5. (Government Exhibit 6.)

During his subject interview, Applicant's stated that in March 2006 he purchased a house. His payments were \$1,200 monthly. He was making bi-weekly payments of

\$600 which were set up on auto pay with the lender that were directly deducted from his checking account at his bank. A year or so later, Applicant learned that his deductions were not going towards his house payments and that he was behind approximately \$24,000. Applicant stated that he sent proof of his payments deducted from his bank account to the lender, but they insisted that they never received the payments. Applicant did not look into the matter any further. In 2010, the lender allowed the Applicant to refinance the house to a make lower payments of \$899 monthly to help him get back on track with his payments. Applicant states that he thought he was current on these payments until July 2014, when he learned from the lender that he was \$75,000 behind on his mortgage, which included the original delinquency of \$75,000, plus fees and additional delinquency costs. Applicant thought the original delinquency amount was added into the refinance. The lender told Applicant that it was not and that Applicant has been delinquent since 2008. (Government Exhibit 6.)

1(a) A delinquent mortgage account is past due in the amount of \$78,190 with a total loan balance of \$145,091. The debt remains owing. This is the delinquent mortgage loan on his house that is currently in foreclosure. (Applicant's Answer to SOR, and Applicant Exhibit A.)

1(b) A delinquent debt owed to a creditor was sent to collection in the approximate amount of \$372. The debt remains owing. Applicant does not know what this account is for. (Applicant's Answer to SOR, and Applicant's Exhibit A.)

1(c) A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$372. The debt remains owing. Applicant does not know what this account is for. (Applicant's Answer to SOR, and Applicant's Exhibit A.)

1(d) A delinquent debt was charged off. The debt remains owing. Applicant does not know what the account is for. (Applicant's Answer to SOR, and Applicant's Exhibit A.)

1(e) A delinquent debt owed to a creditor was placed in collection in the amount of \$3,441. The debt remains owing. Applicant does not know what the account is for. (Applicant's Answer to SOR, and Applicant's Exhibit A.)

1(f) A delinquent medical account was placed for collection in the amount of \$112. The debt remains owing. Applicant does not know what the account is for. (Applicant's Answer to SOR, and Applicant's Exhibit A.)

1(g) A delinquent debt owed to a creditor was placed in collection in the approximate amount of \$577. The debt remains owing. Applicant does not know what the account is for. (Applicant's Answer to SOR, and Applicant's Exhibit A.)

In his response to the FORM, Applicant admits that he has been negligent in his financial responsibilities. He realizes that it is his fault alone. He states that he is currently in the process of mitigating the financial issues alleged in the SOR. He plans to start working with his creditors to bring himself in good financial standing after his unspecified court hearing in September 2016. (Applicant's Exhibit A.)

## 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. 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 access to classified information will be resolved in favor of 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 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 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 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.

Although Applicant has been employed full time with his current employer since September 2014, and before that he served on active duty in the U.S. Air Force for fourteen years, all of the debts in the SOR remain owing. He has done nothing to resolve them or to show a good faith effort to resolve them. He has not sufficiently addressed his delinquent debts, nor has he shown systematic proof of payment toward any of his debts. The evidence is sufficient to raise the above disqualifying conditions.

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

- (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 have not been mitigated. In fact, there are no circumstances beyond his control that have been proven to relieve him of his financial obligations. He has failed to establish that he acted reasonably or responsibly with respect to his debts. He has not demonstrated that he addressed his debts in a responsible or timely manner, as they all remain outstanding. As he stated, he has simply been negligent. At this time, all of the delinquent debts listed in the SOR remain owing. Applicant has not demonstrated that future financial problems are unlikely. Applicant remains excessively indebted. There are no indications that his financial problems are being resolved or are under control.

### **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.

Overall, the record evidence leaves me with questions and or 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 the Directive, are:

Paragraph 1, Guideline F:

**AGAINST APPLICANT**

Subparagraph 1.a:

**Against Applicant**

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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.

---

Darlene Lokey Anderson  
Administrative Judge