



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



In the matter of:

ISCR Case No. 15-06535

Applicant for Security Clearance

Appearances

For Government: Aubrey M. De Angelis, Department Counsel

For Applicant: *Pro se*

July 5, 2017

Decision

LOKEY ANDERSON, Darlene D, Administrative Judge:

Statement of Case

On April 22, 2015, Applicant submitted a security clearance application (SF-86). On April 19, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines F, Financial Considerations and E, Personal Conduct. (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 16, 2016. He denied the SOR allegations and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On August 17, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight items, was mailed to Applicant on August 17, 2016, and received by

him on August 25, 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 8 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 62 years old. He is married with two children. He has an Associate's degree. He served in the U.S. Air Force from 1974 to 1980. He is employed with a defense contractor as an Engineering Technician. 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 two debts totaling approximately \$34,000. These debts include a past due delinquent private loan account in the amount of \$6,048, and a student loan in the amount of \$27,615. Credit Reports of Applicant dated May 13, 2015; and March 23, 2016; reflect that the debts were at that time owing. (Applicant's Exhibits 5 and 6.)

1(a) Applicant states that his private loan in the amount of \$6,048 has been written off by the lender and that the other person with whom he has the loan has paid the Federal taxes related to it. The loan account is a joint account that Applicant remains responsible for. (Answer to SOR.) There is no documentation in the record to show that the loan has been paid.

1(b) Applicant indicates that the student loan is current. Applicant's most recent credit report dated August 12, 2016, indicates that the debt is paid as agreed with a zero balance. (Government Exhibit 7.) The Government alleged in the SOR, obviously

erroneously, that the debt is in deferment status, which itself does not show poor judgment or irresponsibility. In either case, whether the debt is in deferment, or whether it is being paid as agreed, this allegation is found for the Applicant.

Guideline E Personal Conduct

The Government alleges that Applicant is ineligible for clearance because he has exhibited conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is nay failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), dated April 22, 2015. (Government Exhibit 4.) Section 26, asked if he has been over 120 days delinquent on any debt? The Applicant answered, "No" to the question. The evidence in this case does not prove that Applicant falsified his security clearance application. The Government erroneously alleges that the Applicant deliberately failed to disclose that he was \$1,151 past due with a total approximate balance of \$25,959 owed on his student loan account, since the loan was in deferment status. Deferment status means that the Applicant has qualified for the loan to be deferred, and that he is temporarily relieved from his obligations under the loan during that deferment period. There is insufficient evidence in the record to prove that Applicant was 120 days delinquent on the loan before it was deferred. This allegation is also found for the Applicant.

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.

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

Applicant has a delinquent debt that he has not addressed. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. There are none that are applicable here.

In regard to his student loan, I find that since the loan is either in deferment status, as alleged by the Government, or is being paid as agreed, as reflected on his most credit report, it is not delinquent. The evidence shows that Applicant has one past-due debt that he has not paid that remains owing. Assuming this debt, the private loan, was charged off because Applicant did not pay the debt, Applicant cannot be deemed responsible. In fact, to ignore the debt shows irresponsibility. His inaction casts doubt on his current reliability, trustworthiness, and good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) A deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In this case, there is no evidence showing that Applicant falsified his security clearance application.

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 mitigated the Personal Conduct security concerns. The Financial Consideration security concern has not been mitigated.

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
Subparagraphs 1.b.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a.:	For 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