



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



In the matter of:

ISCR Case No. 15-06708

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

July 5, 2017

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On March 3, 2015, Applicant submitted a security clearance application (SF-86). On July 8, 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. The action was taken under Executive Order (EO) 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 October 6, 2016, and requested a hearing before an administrative judge. The case was assigned to me on November 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 15, 2016, scheduling the hearing for January 18, 2017. The hearing was convened as scheduled. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant

offered no exhibits. He also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 26, 2017.

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 29 years old. He is married and has three children. He has a high school diploma and one year of college. He is employed with a defense contractor as a Fire and Security Line 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 seven debts totaling approximately \$26,000. Applicant admitted each of the allegations in the SOR. (See Answer) Credit Reports of Applicant dated March 18, 2015; and November 7, 2016, confirm this indebtedness. (Government Exhibits 3 and 4.) He has been working for his current employer since 2014.

Applicant explained that he has consistently had employment and earned income, but there were periods over the past ten years where work was slow and he was forced to draw unemployment to subsidize his income. During his periods of financial hardship, a number of his debts became delinquent and were eventually sent to collection. Applicant did not pay the debts. Instead he has waited for them to fall off his credit report. The following debts listed in the SOR are the debts at issue.

1(a) A delinquent account for a repossessed vehicle was charged off in the approximate amount of \$23,157. Applicant did not pay the debt. The debt remains owing. (Tr. pp. 21-22.)

1(b) A delinquent credit card debt owed to a creditor was placed for collection in the approximate amount of \$385. Applicant has no recollection of the debt and he did

not pay it. He claims that the debt has fallen off of his credit report. (Tr. pp. 22-25.) The debt remains owing.

1(c) A delinquent cell phone debt owed to a creditor was placed for collection in the approximate amount of \$1,055. Applicant did not pay the debt. He claims that the debt has fallen off of his credit report. The debt remains owing. (Tr. pp. 25-26.)

1(d) A delinquent cell phone debt owed to a creditor was placed for collection in the approximate amount of \$962. Applicant did not pay the debt. He claims that the debt has fallen off of his credit report. (Tr. p. 27.) The debt remains owing.

1(e) A delinquent cable bill debt owed to a creditor was placed in collection in the approximate amount \$390. Applicant claims that the debt has fallen off of his credit report. The debt remains owing. (Tr. p. 28.)

1(f) A delinquent debt owed to a bank for an overdraft fee was placed for collection in the approximate amount of \$259. Applicant did not pay the debt. He claims that it has fallen off of his credit report. The debt remains owing. (Tr. p. 29.)

1(g) A delinquent debt owed to a creditor was placed in collection in the approximate amount of \$165. Applicant disputed the debt as he does not believe that it is his. It has fallen off of his credit report. (Tr. pp. 29-30.)

1(h) A delinquent cable debt owed to a creditor was placed for collection in the approximate amount of \$162. Applicant did not pay the debt. He claims that it has fallen off of his credit report. The debt remains owing. (Tr. pp. 30-31.)

1(i) A delinquent power debt owed to a creditor was placed in collection in the approximate amount of \$137. The debt remains owing. (Tr. p. 30.)

Since 2011, Applicant has worked full-time without interruption. He is the sole provider of his household. He has \$300 in his checking account, and no money in savings. He is currently involved in a rent-to-own option where he has \$3,000 that he has accumulated so far. He does not have a 401(K) but expects to be vested in a union pension in March 2019. Applicant now believes that since his delinquent debt is no longer reflecting as delinquent on his credit report, he may be eligible to purchase a house. He plans to purchase a house in the near future.

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 consistently been employed over the past ten years, there were times when work was slow, and he did not earn enough to pay his bills. During this period, his debts became delinquent and were eventually sent to collection. Since 2011, he has had full-time stable employment. Despite this, Applicant did not pay his debts, but allowed them to fall off of his credit report. 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. He has done nothing to resolve his debt. Instead of trying to pay his debts, he ignored them and allowed them to fall off of his credit report. He has not addressed his debts in a responsible or timely manner, as they have all been sent to collection or charged off and remain outstanding. He has failed to demonstrate that he acted reasonably or responsibly with respect to his debts. To make things worse, Applicant now believes that he is eligible to purchase a house because his debts are no longer showing delinquent on his credit report. This is irrational thinking and shows poor 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 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
Subparagraph 1.h:	Against 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.

Darlene Lokey Anderson
Administrative Judge