



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



In the matter of:

Applicant for Security Clearance

ISCR Case No: 15-08624

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel

For Applicant: *Pro se*

August 10, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant resolved one debt to the satisfaction of the creditor, and brought another debt current. He contested two other debts. However, he failed to introduce documentation to show his state tax debt is adequately being addressed. His history of financial delinquencies remains a concern. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On November 21, 2014, Applicant submitted a security clearance application (SF-86). On June 9, 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 (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*.

Applicant answered the SOR on August 22, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 19, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on September 20, 2016, and received by him on September 26, 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 did not respond to the FORM. His response was due October 26, 2016. DOHA assigned the case to me on August 2, 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 security clearance 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 security clearance. 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 50 years old. He is divorced, since 2001, and has two children. He earned a bachelor's degree in 2003. He has worked for his employer since June 2015. He was unemployed from January 2009 through February 2009, and September 2014 to November 2014. He served on active duty in the Marine Corps from 1987 through 1991. He received an honorable discharge. (Item 2.)

As alleged in the SOR, Applicant was delinquent on five debts, with a total amount of \$22,702, and filed Chapter 13 bankruptcy in 2007 that was discharged in September 2009. Applicant admitted the SOR allegations in ¶¶ 1.e and 1.f. He denied the SOR allegations in ¶¶ 1.a, 1.b, 1.c, and 1.d. His debts are identified in the credit reports entered into evidence. (Answer; Item 5; Item 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant was alleged to be indebted to a creditor in the amount of \$1,028, as stated in SOR ¶ 1.a. This debt is for an automobile loan. (Item 2.) Applicant explained in his answer that he had "fallen behind in the monthly payments due to [the] loss of [his] job however, the amount of \$1,082.57 was paid on December, 2015, to bring the car

loan current.” He presented a credit report dated July 5, 2016, which reflected this debt as “pays as agreed.” This delinquency is resolved.

Applicant was alleged to be indebted to a creditor in the amount of \$10,386, as stated in SOR ¶ 1.b. This debt was for a vehicle he purchased in 2010. (Item 5.) He “voluntarily returned” the vehicle “because [he] could no longer afford to maintain the monthly payments along with keeping current with [his] child support payments and [repay] other family debt that was incurred during [his] marriage.” He claimed that account “erroneously shows on my credit report as a charge off when in fact [creditor] received the collateral back.” (Item 2; Item 3 at 48.) He sent this creditor a letter on August 22, 2016, contesting the entry on his credit report.

Applicant was alleged to be indebted to a creditor in the amount of \$2,176, as stated in SOR ¶ 1.c. Applicant claimed that this debt “is for dental expenses for my son who bares [sic] the same name as I do.” (Item 2.) He sent this creditor a letter on August 22, 2016, contesting this debt.

Applicant was alleged to be indebted to a creditor in the amount of \$1,435, as stated in SOR ¶ 1.d. This debt was owed for child support arrears. Applicant attributed his past arrearages to his unemployment. He had to go to court to get the payments adjusted after he lost his job because his ex-wife would not work with him. Applicant produced documentation that he is current on this account. This delinquency is resolved. (Item 2; Item 3.)

Applicant was alleged to be indebted on a state tax debt in the amount of \$7,677, as stated in SOR ¶ 1.e. Applicant admitted that a state tax lien had been entered against him in December 2012. He explained, “As a casualty of [his] divorce, [he] absorbed a joint tax liability. [He is] current on a payment plan and [has] paid \$2,300 to date toward this liability.” (Item 2.) He attached a copy of a cancelled check, dated May 27, 2016, as proof of this payment. He explained on his SF-86 that this debt was incurred because his ex-wife claimed their daughter as a dependent on her taxes without his knowledge, causing him to owe taxes. (Item 3; Item 4; Item 5.) Applicant’s credit report dated July 5, 2016, reflects an additional state tax lien in the amount of \$8,617 filed July 2014. The cancelled check in Item 2 does not indicate to which tax debt the \$2,300 payment was to be applied.

Applicant filed Chapter 13 bankruptcy in August 2007. Applicant indicated the total debt involved in the bankruptcy was \$420,430. He identified assets totaling \$430,450. (Item 3 at 43; Item 7.) He explained:

This was a result of the loss of employment and [divorce] where I was [responsible] for all the debt as my ex-wife left me with all the bills and did not work for 4 years throughout our separation and eventual divorce, which caused undue hardship on me along with the child support payments I was hit with. (Item 3 at 44.)

His Chapter 13 bankruptcy was converted to a Chapter 7 bankruptcy, and a final decree of discharge of liability was entered in 2009. (Item 5; Item 7.)

The credit report, dated July 5, 2016, reflected Applicant was indebted on an additional collection account in the amount of \$220. (Item 2.)

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 useful 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 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. 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. Directive ¶ E3.1.15 states 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 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 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 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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was delinquent on five debts, in a total of \$22,702; and filed Chapter 13 bankruptcy in 2007, which was converted to a Chapter 7 and discharged in 2009. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes six conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The evidence does not establish mitigation under AG ¶ 20(a). Applicant's financial problems have been ongoing since at least 2007, despite the discharge of a substantial amount of debt in 2009. His 2016 credit report reflects an additional delinquency and a second unresolved state tax lien. He has not demonstrated that future financial problems are unlikely.

The evidence establishes partial mitigation under AG ¶ 20(b). Applicant's financial problems are related to his divorce and periods of unemployment, which were circumstances beyond his control. He acted reasonable and responsibly in repaying his automobile loan delinquency (SOR ¶ 1.a); contesting two debts in writing with the creditors (SOR ¶¶ 1.b and 1.c); and resolving his child support arrearage (SOR ¶ 1.d). However, he did not provide evidence that he acted responsibly under the circumstances with respect to his tax lien, which is necessary for full mitigation under this condition. While he documented one \$2,300 payment to his state in May 2016, that payment does not resolve the debt in full or document toward which tax lien the payment was to be credited.

Applicant presented no documentation of recent financial counseling. AG ¶ 20(c) has not been established.

Applicant established some mitigation under AG ¶ 20(d), as he presented documentation that he made good-faith efforts to address the debts alleged in SOR ¶¶ 1.a and 1.d through payments. At this time, he has not established a history of

responsible action with respect to his state tax debt. There is no evidence of a good-faith effort to repay that debt in the record, other than a single \$2,300 payment.

Applicant established some mitigation under AG ¶ 20(e), as he presented two letters to the creditors in which he disputed the debts alleged in SOR ¶¶ 1.b and 1.c.

Applicant failed to produce evidence to support a finding that he made arrangements with the state tax authority to pay the amount owed and is in compliance with those arrangements. While the \$2,300 payment represents a sizable amount, that one-time payment does not show that he has an arrangement with the state to pay his tax debt or is current on an agreement to repay the debt. Mitigation under AG ¶ 20(g) has not been established.

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, and his financial issues appear to be related to his divorce and brief periods of unemployment. However, the likelihood that financial problems will recur is substantial; and Applicant failed to demonstrate that the potential for pressure, coercion, or duress is reduced or eliminated. Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not met his burden to mitigate the security concerns arising under the guideline for financial considerations.

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 through 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	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 a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge