



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



In the matter of: )  
)  
) ISCR Case: 15-08343  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

June 21, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant incurred more than \$106,315 in delinquent credit card, medical, and mortgage debt over the past four years that he remains unable to repay. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On May 22, 2015, Applicant submitted a security clearance application (SF-86). (Item 2.) On June 7, 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 July 8, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On August 25, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on August 25, 2016, and received by him on August 31, 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 submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded.

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* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> 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 in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, 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 SEAD 4 AG.

### **Findings of Fact**

Applicant is 50 years old. He is married. He has two adult children and two minor children. He has held his present employment with a defense contractor since 2009. He served in the U.S. Navy from 1987 to 2009, and was honorably discharged. He achieved the rate of E-8. (Item 2.)

In his answer to the SOR, Applicant admitted being delinquent on all five debts alleged in the SOR, with explanations. (Item 1.) The debts are documented in the two record credit bureau reports from June 9, 2015, and April 26, 2016. (Items 4 and 5.) Applicant said that his financial problems resulted from "Hardship/Status of economy/Cost of living." In his interview with an agent of the Office of Personnel Management (OPM) he explained that Applicant's wife's salary was reduced beginning in 2014, due to a reduction in her work hours. (Item 2; Item 3.)

Applicant is indebted to a medical provider in the amount of \$166, as alleged in SOR ¶ 1.a. This debt has been past due since January 2013. In his Answer, he stated, "I admit. Will resolve medical debt." He provided no documentation of any action taken to resolve this debt. It remains outstanding. (Item 1; Item 4; Item 5.)

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

Applicant is indebted on a charged-off second-mortgage account in the amount of \$81,695, as alleged in SOR ¶ 1.b. This debt became delinquent in April 2015. In his Answer, he indicated, “payment plan in progress,” but provided nothing further in this regard. This debt is unresolved. (Item 1; Item 4; Item 5.)

Applicant owes a total of \$24,454 on the three delinquent credit card accounts alleged in SOR ¶¶ 1.c, 1.d, and 1.e. These debts all became delinquent in February 2013. Applicant said in his answer to the SOR that “a 1099 form was submitted,” but provided no evidence of any such action while the record remained open into September 2016 to permit him to supply additional mitigation. (Item 1; Item 4; Item 5.)

Applicant disclosed on his SF-86, and during an interview with an investigator, that he participated in financial counseling from 2012 to 2016 on a quarterly basis. His financial advisor allegedly guided him in consolidating his debt and creating a budget. He did not provide budget information into the record from which to predict his future solvency. (Item 2; Item 3.)

### **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 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 personal 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 three conditions that could raise security concerns and may be disqualifying 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.

Applicant has been continuously employed since at least 1987, yet incurred more than \$106,315 in delinquent credit card, medical, and mortgage debt. He was unable to repay three credit cards, his second mortgage, and a small medical debt, despite the apparent ability to do so. These financial issues date back to 2013, and continue to date. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four 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, or 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant continues to owe all of the debt alleged in the SOR. He offered no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that his financial problems were caused by his wife's reduction in hours and other hardships. These may have been circumstances beyond his control, although he failed to elaborate as to what the other hardships were, and whether the reduction in hours was voluntary. However, the evidence does not sufficiently establish causation, or show that he acted responsibly under the circumstances, as required for mitigation under AG ¶ 20(b).

Applicant's claim that he received IRS Form 1099s for the three credit cards is insufficient to establish that his financial problems are being resolved pursuant to a good-faith effort on his part. He failed to provide documentation that he has addressed any of his delinquent accounts. No evidence of financial counseling from a legitimate and credible source or budget information establishing solvency going forward was provided. Further, there are no clear indications that Applicant's financial problems are under

control. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

### **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 honorably served in the U.S. Navy for 22 years. However, Applicant is a mature adult, who is accountable for his choices. He continues to owe more than \$106,315 in delinquent debt that he has accumulated over the past four years and cannot afford to repay. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet 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.e:

**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 national security eligibility and a security clearance. National security eligibility is denied.

Jennifer I. Goldstein  
Administrative Judge