



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



In the matter of:)
)
) ISCR Case: 15-08481
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

10/17/2017

Decision

WHITE, David M., Administrative Judge:

Applicant owes \$160,000 for an unpaid judgment that was entered against him in 2010. He offered no evidence of either efforts or means to resolve this debt. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On April 21, 2015, Applicant submitted a security clearance application (SF-86). (Item 2.) On May 22, 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 13, 2016,¹ and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On July 27, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant on July 27, 2016, and received by him on August 2, 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. Items 1 through 4 are admitted.

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 decisions² 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 set forth in Appendix A of SEAD 4. I considered the 2006 adjudicative guidelines, as well as the SEAD 4 AG, in determining Applicant's national security eligibility. My decision would be the same under either set of guidelines, but this decision is issued pursuant to the SEAD 4 AG.

Findings of Fact

Applicant is 39 years old, married, and has a 5-year-old child. He earned a bachelor's degree in 2002, and a master's degree in 2005. He has held his present employment as a systems engineer with a major defense contractor since 2003; and is seeking to renew the security clearance he has held since 2005 in connection with that position. He has also worked as a licensed real estate agent and broker since 2010, and been responsible for home sales totaling more than \$1.46 million. He has no prior military service or Federal civilian employment. (Items 1, 2.)

Applicant purchased a home as an investment in 2007 with a 30-year, \$159,000 first mortgage loan that required monthly payments of \$1,394. He lived in a rental apartment from January 2005 until August 2009. In 2008, the mortgage lender initiated foreclosure proceedings after Applicant stopped making required payments. In October 2010 the creditor holding the resulting debt obtained a civil judgment, to which Applicant agreed on advice of his attorney, for \$160,000. Despite his full time employment with the defense contractor and his successful work as a real estate agent and broker since that time, Applicant has made no payments toward this judgment debt. (Items 1, 2, 4.)

¹ Applicant dated his signed statement, "6/13/2014." This was an obvious typographical error, since it would predate the SOR. His notarized forum selection and signature page contained the correct date.

² 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 said, in his April 2015 SF-86 description of this debt, that he had hired an attorney to represent him with respect to his options for obtaining relief from creditors under bankruptcy law. He said that the attorney advised him the judgment debt was unsecured and would be dischargeable, but that he had postponed filing bankruptcy due to the birth of his child and the accumulation of associated recent new debt. Finally, he said that he planned to file bankruptcy to discharge the debt later that year (2015). (Item 2.)

In Applicant's June 2016 answer to the SOR, he claimed that a series of new debts he incurred as a result of confusion over his medical insurance claim procedures, as well as the unexpected failures of most of his major home appliances and utility systems, caused him to decide to delay his planned 2015 bankruptcy filing. He said that he continued to work with his bankruptcy attorney's staff, and planned to file in late summer or early fall of 2016. (Item 1.) As noted above, he was offered the opportunity to provide additional information in response to the FORM until September 1, 2016, but neither provided proof of any action toward resolving this debt nor requested additional time in order to do so.

Applicant provided June 4, 2016 credit reports from all three major credit bureaus, which showed that he was current on all of his debt payments except the \$160,000 judgment alleged in the SOR. He also submitted letters from four friends and colleagues who unanimously expressed their high opinions of his character, trustworthiness, integrity, and responsibility. (Item 1.)

Applicant did not document any financial counseling, other than his unsubstantiated statements that he had consulted with a bankruptcy attorney and his staff. He provided no budget information from which to predict his future solvency, or his ability to make any required bankruptcy payments should he eventually obtain a confirmed Chapter 13 plan. He offered no evidence to support findings concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures there. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 by a major defense contractor since 2003, yet incurred \$160,000 in delinquent debt in 2008 that has been reduced to judgment since 2010. He documented neither the ability nor any effective effort to satisfy this debt. 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 the \$160,000 judgment debt, to which he agreed in 2010. His failure to address this substantial debt in any meaningful way over the past seven years creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that he made a bad real estate investment, and a subsequent series of new debts resulted in his choice not to file for bankruptcy relief. He never said that he intended to pay the judgment debt in whole or in part. Some of his post-judgment new debts may have arisen from circumstances beyond his control, although he acknowledged that the judgment debt itself resulted from voluntary choices on his part. In any event, the evidence does not sufficiently establish causation between circumstances beyond his control and either the original debt or his failure to address it during the past seven years. Nor did he otherwise show that he acted responsibly under the circumstances, as required for mitigation under AG ¶ 20(b).

Applicant offered no evidence of financial counseling or budget information establishing solvency going forward while addressing this judgment. He failed to demonstrate that the problem is being resolved, is under control, or that a good-faith effort toward resolution has actually been initiated. 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 national security eligibility 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, who is accountable for his choices. He continues to owe \$160,000 for a delinquent judgment debt to which he agreed seven years ago and cannot afford to repay. He stated on multiple occasions since 2015 that he intends to file for bankruptcy relief to address this debt, but failed to demonstrate any meaningful steps toward that end. 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

Subparagraph 1.a:

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.

DAVID M. WHITE
Administrative Judge