



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case: 14-05302
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Appearances

For Government: Pamela Benson, Esquire, Department Counsel
Jim Norman, Esquire, Chief Department Counsel

For Applicant: *Pro se*

November 17, 2017

Decision on Remand

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to have two delinquent debts totaling \$43,558. He resolved both of his delinquencies to the satisfaction of the creditors. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

Statement of Case

On March 20, 2013, Applicant submitted a security clearance application (SF-86). On March 23, 2015, 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 (EO), *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 April 18, 2015. He did not explicitly admit or deny the SOR allegations concerning his two delinquent loans. He 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 six Items, was mailed to Applicant on July 27, 2016, and received by him on August 10, 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 responded to the FORM in an undated submission, received by DOHA on September 12, 2016. He did not object to Items 1 through 6. Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on May 10, 2017. Items 1 through 6 were admitted into evidence. Applicant's response to the FORM is marked as exhibit (AE) A and was also admitted.

On June 21, 2017, I issued a Decision finding that it was not clearly consistent with the national interest to grant Applicant national security eligibility. On September 29, 2017, this case was remanded to me to "give Applicant an opportunity to address the credit card debt" identified in SOR allegation 1.b, which had been improperly alleged as a "mortgage debt" on the SOR. On October 4, 2017, I contacted the Government and applicant to inform them the record would be reopened for the submission of additional evidence in this case until November 6, 2017.

On October 6, 2017, the Government submitted a Motion to Amend the SOR to correct SOR allegation 1.b to read as follows:

You are indebted to [Creditor], account number [omitted], in the amount of approximately \$10,340. As of the date of the Statement of Reasons this debt remained unpaid.

Applicant had no objection to this Amendment and it was granted. On November 6, 2017, Applicant submitted nine additional documents, marked AE 1 through AE 9. Department Counsel had no objections to AE 1 through AE 9 and they 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*, 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 43 years old. He is married, with two minor children. He earned a master's degree in 2010. He has worked for his employer since October 2011. (Item 2.)

Applicant was indebted on a delinquent mortgage in the total amount of \$33,218, as alleged in SOR subparagraph 1.a. This debt had been delinquent since May 2009. Applicant purchased the property, a new home that began construction in approximately 2006, at the height of the real estate boom. By the time construction was completed, Applicant's financial situation had changed and he had purchased another home in which he resided. He rented the newly constructed home to tenants. When his tenants moved out at the height of the nationwide financial crisis, he was unable to rent the property. Applicant tried to refinance the home, but his application was not approved. The property value of the home declined and he was unable to sell it for the amount owed on the mortgage. The bank approved a short-sale on the property. The terms of the short-sale required Applicant to repay \$20,000 on this loan, which he paid through monthly payments of \$500. This debt was resolved in December 2015. (Item 6; AE A.)

Applicant was indebted on a delinquent credit card account in the total amount of \$10,340. This account became past due in 2009 and was charged off by the creditor in 2011. Applicant explained that this credit card debt "was a direct result of the financial difficulties from the real estate market crash." He resolved it as expediently as he could by negotiating a settlement with the creditor in April 2011. He presented a letter from the collection agent on this account, which documented that it "was satisfied by way of settlement." (AE 1; AE 2.)

Applicant is respected as an "upstanding citizen and proactive member of the community" by his coworker. He has received several awards from government agencies in recognition of his exceptional performance. (AE 3; AE 5; AE 6; AE 7.) Recent credit reports from each of the three credit reporting agencies show that Applicant has an "excellent" credit score and no delinquent financial obligations. (AE 7; AE 8; AE 9.)

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 EO 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* 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 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 one condition that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations.

Applicant defaulted on his mortgage obligation in 2009. His credit card debt also became delinquent in that same timeframe. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three 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; and

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

Applicant made good-faith efforts to address and repay his mortgage and credit card debts after he suffered financial hardship during the national economic downturn in 2007 to 2009. Since then, he has acted responsibly by resolving all of his delinquent debt. He has an excellent credit rating and no delinquent accounts. Future financial delinquencies are unlikely. All of the above mitigating conditions apply.

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 took reasonable and effective action to resolve the financial issues created by his delinquent mortgage and credit card debt. He is respected by his coworker and has earned awards for his professional excellence. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge