



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



In the matter of:

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ISCR Case No. 14-05641

Applicant for Security Clearance

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his delinquent debt and his failure to disclose it on his security clearance application, as required. Clearance is denied.

Statement of the Case

On February 21, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action 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 on September 1, 2006.

On April 1, 2015, Applicant answered the SOR, admitting subparagraphs 1.a, 1.b, 1.f, 2.a, and 2.b, and denying the remaining allegations. He requested a decision based on the administrative record instead of a hearing. On March 7, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 14, 2016, and was notified of his opportunity to file a response within 30 days of receipt. He did not respond. The case was assigned to me on May 9, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AGs supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Evidentiary Ruling

Item 6 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on March 18, 2015. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

Findings of Fact

Applicant is a 63-year-old married man with one adult child. He earned an associate's degree in 1981 and a bachelor's degree in 1991. Applicant worked for the same employer for 33 years, from 1973 to 2006, but was compelled to retire abruptly after his employer announced plans to close the factory where he worked. He remained retired for four years through 2010 before taking a job as a custodian. Since 2013, he has worked for a defense contractor as a plumber. (Item 3 at 10-13)

Applicant has delinquent debt totaling approximately \$65,000, as alleged in the SOR. All of the alleged delinquent debts are supported by record evidence (Items 4 and 5). Applicant contends his financial problems corresponded with his abrupt retirement in 2006 and the death of his wife, whose income had helped him make ends meet. (Item 2 at 1)

Applicant provided no evidence that he has paid or formally disputed any of the debts, nor has he provided any other evidence of steps taken to resolve the delinquencies. In addition, Applicant failed to provide relevant, material information about his personal finances, as requested on Section 26 of his security clearance application, executed in June 2013. He admitted the allegations, but did not provide any explanation.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).²

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

² The factors under AG ¶ 2(d) are as follows:

(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.

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. . . .

Applicant's SOR delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

AG ¶ 20(a) 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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving 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

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributes his financial delinquencies to an abrupt retirement in 2006 after the factory where he had worked for 33 years closed, together with the death of his wife, whose income he had needed to help make ends meet. However, the record does not reflect any subsequent actions taken to pay, dispute, or otherwise resolve the debts. Under these circumstances, none of the mitigating conditions apply. I conclude Applicant has failed to mitigate the financial considerations security concerns.

Guideline E, Personal Conduct

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information." (AG ¶ 15) Applicant's admitted falsifications trigger the applicability of AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." Applicant provided no explanation for deliberately failing to disclose any of his delinquent debts on

his security clearance application, as required. Consequently, he has failed to mitigate the personal conduct security concern.

Whole-Person Concept

I have considered the whole-person factors in my adjudication of the relevant disqualifying and mitigating conditions, and they do not warrant a favorable conclusion.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge