



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



In the matter of: )  
)  
) ISCR Case No. 15-01781  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

October 25, 2017

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On September 5, 2014, Applicant submitted a security clearance application (SF-86). On April 1, 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*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on April 20, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On November 3, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was mailed to Applicant on November 3, 2016, and received by him on November 9, 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 failed to respond to the FORM. Applicant did not object to Items 1 through 5, and they 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 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 66 years old. He is married with one daughter. He has a high school diploma and is employed with a defense contractor as a shipping employee. He is applying for a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified ten debts totaling approximately \$40,000 that include delinquent credit card accounts. Applicant admits to each of the delinquent accounts listed in the SOR.

Credit Reports of Applicant dated September 22, 2014; and January 28, 2016, confirm the indebtedness listed in the SOR. (Government Exhibits 4 and 5.) Applicant began working for his current employer in June 2009. From March 2005 to June 2009, Applicant was unemployed and living off of his savings. He was also unemployed from June 2013 to June 2014. He also used his lump sum retirement he received from his previous employer to pay bills and living expenses. He did not collect unemployment benefits. He had a hard time financially. (ROI dated September 26, 2014 through October 17, 2014, Government Exhibit 3.)

Over the years, Applicant has experienced periods of under-employment, relocation, and periods where he had to care for ill family members. These situations have negatively impacted his financial history. At this point in his life, Applicant has chosen not to pay these debts. Applicant states that while he admits each of the allegations in the SOR, he is sure that the charges were not as high as they appear when he stopped making payments on the debts. He further states that all of the

charges have been written off by the creditors. Given his age and his limited wages, he does not believe it is logical or feasible for him to reopen all of the accounts in the SOR.

The following debts became owing and remain outstanding:

1(a) A judgment was filed against the Applicant by a bank in May 2011 in the approximate amount of \$2,124. The judgment remains owing.

1(b) A delinquent account was placed for collection in the approximate amount of \$3,144. The account remains owing. (Answer to SOR.)

1(c) A delinquent account was placed for collection in the approximate amount of \$3,399. The account remains owing. (Answer to SOR.)

1(d) A delinquent account was placed for collection the approximate amount of \$66. The account remains owing. (Answer to SOR.)

1(e) A delinquent account was placed for collection in the approximate amount of \$5,743. The account remains owing. (Answer to SOR.)

1(f) A delinquent account was placed for collection in the approximate amount of \$764. The account remains owing. (Answer to SOR.)

1(g) A delinquent account was placed for collection in the approximate amount of \$1,810. The account remains owing. (Answer to SOR.)

1(h) A delinquent account was placed for collection in the approximate amount of \$3,900. The account remains owing. (Answer to SOR.)

1(i) A delinquent account was placed for collection in the approximate amount of \$2,363. The account remains owing. (Answer to SOR.)

1(j) A delinquent account was placed for collection in the approximate amount of \$3,017. The account remains owing. (Answer to SOR.)

There is no evidence in the record, including documentation, to show that Applicant has made any financial arrangements with any of his creditors or that he has paid off any of his debts. Thus, each of the debts listed in the SOR continue to remain delinquent and owing. Additional documentation relating to any debt repayments plan with his creditors, his current financial state of affairs, as well as any budgets in place, could have been helpful to show that some effort had been made. The record is void of mitigation.

## 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 to be used 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 access to national security eligibility 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 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 concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable 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 is excessively indebted to the creditors listed in the SOR. He has failed to prove that he has done anything to resolve the debts. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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.

Applicant states that given his age and limited wages, he does not believe it to be reasonable to reopen the accounts listed in the SOR to repay them. Under the particular circumstances here, Applicant has failed to establish that he acted reasonably or responsibly with respect to his debts. Accordingly it is found that his debts all remain

owing. Applicant has not demonstrated that future financial problems are unlikely. There are no indications that his financial problems are being resolved or are under control.

### **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.

Under 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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has had periods of under-employment, relocation, and caring for ill family members that have negatively impacted his financial situation. He has provided no information concerning these debts other than to say that they remain delinquent. Applicant has not demonstrated that he is financially responsible.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

## Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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 for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge