



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



In the matter of:

ISCR Case No. 15-06889

Applicant for Security Clearance

Appearances

For Government: John Bayard Glendon, Deputy Chief Department Counsel

For Applicant: *Pro se*

October 25, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

On December 22, 2010, Applicant submitted a security clearance application (SF-86). 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. 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 a date uncertain. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On October 20, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 7 Items, were received by Applicant on October 28, 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 and

submitted seven additional exhibits which are admitted into evidence. DOHA assigned the case to me on October 1, 2017. Items 1 through 7 are also 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 61 years old. He is divorced and now married to a spouse who resides in Haiti. He holds an Associate's degree. He is employed with a defense contractor as a CBRN Medical Education/Trainer Consultant. He is seeking to obtain 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 the fact that the Applicant has nine delinquent debts, including three Federal tax liens totaling about \$84,000, a state tax lien in the amount of about \$6,000 and consumer/credit card debt totaling about \$8,000. Applicant admitted allegations 1.a., 1.b., 1.c., 1.e., 1.f., and 1.h. in the SOR. He denied allegations 1.d., 1.g., and 1.i. (See Answer) He has been working for his current employer since September 2010.

Applicant served on active duty in the U.S. Army from December 1978 to October 1988, and then from November 1988 to June 1999. He retired honorably from the Army on June 30, 1999. Applicant held a security clearance while in the military.

1.a., 1.b., and 1.c. At some point, Applicant worked as an independent contractor and was audited by the Internal Revenue Service (IRS). The audit discovered that Applicant had overdue taxes and interest and penalties for underpaid taxes for tax years 2008, 2010, and 2012. A Federal lien was filed against the Applicant in September 2013 in the approximate amount of \$48,708; and two others were filed in January 2015 in the amount of approximately \$2,883; and in the approximate amount of \$48,708. Applicant states that he originally established an installment agreement with the IRS in the amount of \$800 to repay the debt. In October 2017, he established a

new installment agreement in the amount of \$1,350. This agreement authorizes the IRS to debit his checking account each month for payment. (Applicant's Exhibit A.) The first installment under this payment agreement was on January 15, 2017. At this point, assuming Applicant has continued to make these payments he has now made ten payments totaling \$13,500, and plans to continue to do so until his taxes are paid in full and the liens are released.

1.d. A state tax lien was filed against Applicant in August 2012, in the approximate amount of \$5,918. Applicant satisfied the lien on December 17, 2014 and it was released. (Applicant's Exhibit B and his Response to FORM.)

1.e. A delinquent debt owed to a department store was charged off in the approximate amount of \$2,056. Applicant set up a payment plan of \$58.17 monthly that is automatically debited from his checking account until the balance is paid in full. (See Response to FORM.)

1.f. A delinquent debt owed to a bank was sent to collection in the amount of \$4,721. Applicant states that this debt was incurred by purchasing business equipment when he was an independent contractor. He has contacted the creditor to set up payment arrangements. He is currently awaiting a letter from the creditor to explain payment arrangements. (Government Exhibit F.) Applicant has set up a payment plan and is paying \$56.57 bi-weekly which is automatically deducted out of his checking account. (See Response to FORM.)

1.g. A delinquent debt owed to a telephone provider was placed for collection the approximate amount of \$347. Applicant disputed the debt since he believes that he was charged for movies that he never ordered. He claims that he has contacted the creditor many times regarding the matter. If the dispute is not honored, he states that he will pay the debt. (Government Exhibit C.) Applicant has attached a receipt showing proof of payment in the full amount of \$347.04. (See Response to FORM.)

1.h. A delinquent debt owed to a department store was placed for collection in the amount of \$719. Applicant states that he does not know to whom to make the payment. He will continue to try to find out who controls the account to arrange for payment. (Government Exhibit G.) He states that when he finds the information he will pay the debt. (See Response to FORM.)

1.i. A judgment was filed against the Applicant by a bank in 2008 for money owed on a second mortgage in the approximate amount of \$19,223. Applicant explained that this second mortgage was for his home that was foreclosed upon. Applicant's contends that he made regular monthly payments to resolve the debt until February 2015, and had reduced the debt to \$15,811. (Government Exhibit D.) He believes that the creditor never reported the payments to the credit bureaus. He has contacted the original creditor and the new creditor who purchased the debt. Neither party will provide him with documentation to show that he has been paying. Copies of Applicant's bank statement show that he has made payments and continues to do so.

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 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.

Directive ¶ E3.1.14 requires the Government to 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. Four are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations, and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant became delinquently indebted. His house was foreclosed upon, and a judgment was entered against him for the amount of the second mortgage. He incurred significant tax debt as an independent contractor and other delinquent consumer debt. This 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:

- (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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has set up a payment plan that he is following with the IRS. He plans to continue the payments until all of his back taxes are paid and the liens are released. He has set up payment arrangements with all of those creditors he could locate and plans to continue making those payments until he is debt free. It is still unclear from the record why he has been unable to pay his bills on time. Whether it be a problem with procrastination, or a spouse who was trusted with paying the bills who failed to do so, or whether he simply spent beyond his means, Applicant had a problem that he has resolved. He has demonstrated that he understands his responsibility to be financially responsible to be eligible for a security clearance. He understands that he must continue to show responsibility going forward. He is currently addressing his financial problems. There is sufficient evidence in the record to show that he has been and continues to act in a reasonable and responsible manner.

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 not explained how these debts arose. Furthermore, given the age of the debts, beginning in 2008 and continuing from that time, he should have been able to resolve them sooner. However, given the fact that he has recently been most diligent about resolving them, and continues to pay them on a monthly basis through automatic payments, and has provided this court with

documentation to show his progress, Applicant can be said to have shown responsibility. Applicant's financial responsibility must continue. He must, however, never allow himself to get into excessive indebtedness again.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge