



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06927

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel
For Applicant: *Pro se*

October 25, 2017

Decision

ROSS, Wilford H., Administrative Judge:

On December 17, 2014, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On June 8, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on June 29, 2016, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) On August 29, 2016, Department Counsel submitted the Department's written case. A

complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to Applicant, who received the file on September 12, 2016.¹

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional information. The case was assigned to me on July 11, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

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 implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, 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 promulgated in SEAD 4.

Findings of Fact

Applicant is 47 and married with three children. He has been employed by a defense contractor since December 2012 and seeks to obtain a security clearance in connection with his employment. He served on active duty with the Navy from 1992 through August 2012, retiring as a Yeoman First Class (E-6). He was unemployed from the time he left the Navy until he started work with his current employer. (Item 3 at Sections 13A, 16, 17.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

¹ Department Counsel submitted six Items in support of the SOR allegations. Item 4 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 5, 2015, and June 30, 2015. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness.

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 denied all the allegations in the SOR under this Paragraph. The total amount of money Applicant allegedly owes on those debts is approximately \$10,000. The existence and amount of the debts is supported by credit reports dated December 31, 2014; and March 15, 2016. (Items 5 and 6.) The status of the debts as of March 15, 2016, is as follows:

1.a. Applicant denied owing a creditor \$478 for a charged-off account. Items 5 and 6 both show this account as delinquent, indicating no payment was made after July 2011. No further information was provided. This debt is not resolved.

1.b. Applicant denied owing a creditor \$479 for a past-due account. Items 5 and 6 both show this account as delinquent, indicating no payment was made after July 2012. No further information was provided. This debt is not resolved.

1.c. Applicant denied owing a cable provider \$347 for a past-due account. Item 5 shows this account as delinquent, indicating the last activity on the account was in July 2012. No further information was provided. This debt is not resolved.

1.d. Applicant denied having a charged-off account with a creditor. Items 5 and 6 both show this account, but do not indicate any past-due or charged-off amount. No further information was provided. Based on the available information, I find that the Government has not proved this allegation. It is found for Applicant.

1.e. Applicant denied owing a creditor \$1,491 for a past-due account. Item 5 shows this account as delinquent, indicating the last activity on the account was in February 2009. No further information was provided. This debt is not resolved.

1.f. Applicant denied owing a medical creditor \$146 for a past-due account. Items 5 and 6 both show this account as delinquent since October 2012. No further information was provided. This debt is not resolved.

1.g. Applicant denied owing a creditor \$409 for a past-due account. Items 5 and 6 both show this account as delinquent since May 2012. No further information was provided. This debt is not resolved.

1.h. Applicant denied owing a creditor \$2,788 for a past-due account. Item 5 shows this account as delinquent, indicating the last activity on the account was in November 2008. No further information was provided. This debt is not resolved.

1.i. Applicant denied owing a creditor \$1,026 for a past-due account. Items 5 and 6 both show this account as delinquent, indicating the first delinquency was in September 2011. No further information was provided. This debt is not resolved.

1.j. Applicant denied owing a creditor \$615 for a charged-off account. Items 5 and 6 both show this account as delinquent, indicating no payment was made after June 2014. No further information was provided. This debt is not resolved.

1.k. Applicant denied owing a creditor \$341 for a past-due account. Items 5 and 6 both show this account as delinquent. No further information was provided. This debt is not resolved.

1.l. Applicant denied having a charged-off account with a creditor. Item 6 shows this account as charged off in the amount of \$88, and that the debt was "Transfer/Sold." No further information was provided. I find that a debt existed with this creditor, and that it is not resolved.

1.m. Applicant denied owing a creditor \$46 for a past-due account. Item 5 shows this account as delinquent, indicating that the last activity was in December 2009. No further information was provided. This debt is not resolved.

1.n. Applicant denied owing a creditor \$1,819 for a past-due account. Item 5 shows this account as delinquent. No further information was provided. This debt is not resolved.

Applicant elected not to respond to the FORM. He submitted no financial information, such as a budget, from which to make a conclusion that he is now financially stable.

Paragraph 2 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Applicant denied both allegations under this paragraph.

2.a. Applicant filled out his e-QIP on December 17, 2014. (Item 3.) Section 26 of the e-QIP concerns Applicant's financial record. One of the subsections under that section is entitled, "Delinquency Involving Routine Accounts." Applicant was asked whether, in the seven years preceding that date, he had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off or cancelled; and whether he had been 120 days delinquent on a debt, or whether he was currently 120 days delinquent on a debt. Applicant responded, "No," to this question. This was a false response. Applicant had delinquent debts that were in collection, as set forth under Paragraph 1, above, which fit the question.

2.b. Applicant was interviewed by a DoD authorized investigator on May 5, 2015. During this interview, it is alleged Applicant falsified material facts by confirming his, "No," responses as set forth under allegation 2.a, above. The investigator prepared a

ROI, which was the investigator's interpretation of what the Applicant said during the interview. As stated under footnote 1, above, Applicant did not certify the accuracy or truth of the ROI.

Applicant denied both these allegations without elaboration in his Answer, and also elected not to respond to the FORM. For the sake of discussion, the following is a quotation from Item 4 at pages 5 and 6, "After subject [Applicant] confirmed the financial record information on the case papers, Subject was informed that during the course of the investigation that information was found that he had delinquent financial accounts; . . . Subject did not list the delinquent financial accounts on the case papers due to not having knowledge or paying off some of the accounts that were found during the course of the investigation."

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. 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 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 useful 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, the administrative judge applies 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(c), 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, "Any doubt concerning personnel being considered for 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.

According to 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 seeks access to classified information enters 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.

Finally, as emphasized in Section 7 of EO 10865, “Any 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

Paragraph 1 (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 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, based on documentary evidence, had thirteen delinquent accounts that he could not or chose not to resolve. Allegation 1.d was found for Applicant. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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.

The evidence does not establish that any of the above mitigating conditions apply to Applicant. He failed to submit any evidence that would tend to support any of them. Applicant had about six months of unemployment after he left the Navy, but did not submit any information showing how that period of unemployment affected his finances, or what he has done since that time to rectify the situation. There is no basis for me to find that Applicant has mitigated the security concerns of his financial situation. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his e-QIP and subsequent interview, the following disqualifying conditions could apply under 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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant denied intentionally falsifying his e-QIP. When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record

evidence as a whole to determine an applicant's state of mind at the time of the omission.³

In this case, there is insufficient evidence in the record to prove Applicant had a specific intent to falsify his questionnaire. Even assuming Item 4 was admissible, the agent's rendition of Applicant's statements at the interview are simply too vague to make a finding that Applicant made an intentional false statement then, or on his questionnaire. There is virtually no other evidence as to these allegations, since both parties elected not to request a hearing. Paragraph 2 is found for Applicant.

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(a):

(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 national security 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. Applicant's financial irresponsibility was recent, voluntary, and occurred when he was a mature adult. Rehabilitation was not demonstrated, nor was unlikelihood of recurrence. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For 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
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For 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.

WILFORD H. ROSS
Administrative Judge