



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



In the matter of:

ISCR Case No. 15-08430

Applicant for Security Clearance

Appearances

For Government: Ray T. Blank, Jr., Department Counsel

For Applicant: *Pro se*

November 30, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 2, 2015 Applicant submitted a security clearance application (SF-86). (Government Exhibit 4.) On February 24, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order 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 25, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 23, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing twelve Items, was received by Applicant on May 26, 2017. 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. DOHA assigned the case to me on October 1, 2017. Items 1 through 12 are admitted into evidence, and are hereinafter referenced as Government Exhibits 1 through 12.

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 48 years old. He has been married and divorced and has two children. He is employed with a defense contractor. 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 ten allegations involving delinquent debts totaling in excess of \$20,000, which include a Federal tax lien, medical accounts and other consumer debt. Applicant admits allegations 1.a., 1.b., and 1.c., and denies allegations 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., and 1.j. (Government Exhibit 2.)

From 2007 to March 2015, Applicant was employed by a sheet metal company. Between March 1999 to 2007, Applicant was self-employed. He has never held a security clearance, and he has no military service.

Credit Reports of the Applicant dated March 25, 2015; November 9, 2015; April 28, 2015; January 18, 2016; and May 15, 2017, indicate his indebtedness to each of the creditors listed in the SOR. (Government Exhibits 5, 6, 7, 8 and 9.) There is no track record of debt resolution efforts or any regular payments made to any creditor despite the age of the obligations.

1.a. Applicant failed to file and pay his Federal income tax returns for tax years 2007 through 2012, as required. Applicant admits the debt and states that he has satisfied it. In his e-QIP, he claimed that he owed about \$8,000 in Federal taxes and was making payments of \$500 monthly. (Government Exhibit 4.) He provided no documentation to support this averment.

1.b. Applicant failed to file and pay his state tax returns for tax years 2007 through 2012, as required. Applicant admits the debt and states that he has satisfied it. In his e-QIP, he claimed that he owed \$5,000 in state tax debt. He also states that he was going to set up some payment arrangements for his state taxes but provided no documentation to support this averment. (Government Exhibit 4.)

1.c. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$757. Applicant admits the debt and states that he cosigned for his daughter's car and he defaulted on the loan. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied.

1.d. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$136. Applicant states that he is unaware of the debt. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied

1.e. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$100. Applicant states that he is unaware of the account. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied.

1.f. Applicant is indebted to a telephone company for an account that was placed for collection in the approximate amount of \$143. Applicant states that he is unaware of the account and that it could be his ex-wife's. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied.

1.g. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$1,184. Applicant states that he is unaware of the debt. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied.

1.h. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$625. Applicant states that he is unaware of the debt. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied.

1.i. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$343. Applicant states that he is unaware of the debt. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied.

1.j. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$49. Applicant states that he is unaware of the debt. (Government Exhibit 2.) There is no evidence to show that the debt has been satisfied.

Applicant claimed that he has satisfied his tax filing obligations and has been making payments to resolve his delinquent tax debt, and that he has resolved his Federal taxes. (Government Exhibit 2.) He has failed to provide documentation concerning his filing of income tax returns or the resolution of any tax debt. Although he denied knowing about many of his debts, he failed to provide any dispute to the validity of any of his debts. Of those he admitted, he failed to provide documentation of resolution, or any alleged payment plans, settlement offers, or settlement agreements, or payments, for any of the remaining debts listed in the SOR. Applicant has failed to establish a track record showing that he has done anything to resolve any of his delinquent debt.

Guideline E – Personal Conduct

The Government alleges that the Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), Standard Form 86 dated March 2, 2015. Section 26 asked about his Financial Record, specifically, whether in the past 7 years, he had failed to file or pay Federal, state or other taxes when required by law or ordinance? Applicant responded, “YES,” and disclosed that he failed to file his Federal and state income taxes for 2011. (Government Exhibit 4.) Applicant failed to disclose that he has also failed to file and or pay his Federal and state income taxes for tax years 2008, 2009, 2010 and 2012. (Government Exhibit 4.) Applicant states that he misunderstood the question and put the date he started his payment plan for his Federal taxes. (Government Exhibit 2.)

On the same questionnaire, Section 26 asked about Applicant’s Financial Record, specifically, whether in the past 7 years, he had a lien placed against his property for failing to pay taxes or other debts? Applicant responded, “NO”. (Government Exhibit 4.) This was a false answer. Applicant had a Federal tax lien entered against him in July 2012 for \$25,126 that has not been released. (Government Exhibit 10.) Applicant claims that he thought he answered this question in 26.a. and 26.b. (Government Exhibit 2.)

On the same questionnaire, Section 22 asked about Applicant’s Police Record, specifically if he ever had been “convicted of an offense involving domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common?. . . Have you **EVER** been charged with an offense involving alcohol or drugs?” (Emphasis in original.) Applicant responded, “YES,” and disclosed his drug charge in January 2005.

(Government Exhibit 4.) He failed to disclose his other drug charges, in May 1989 and in November 1993; as well as his domestic violence related convictions in March 1994, and September 2006. Applicant claims that he did not remember all of the dates of the offenses. (Government Exhibit 2.)

Applicant had an obligation to answer the questions on the application accurately. He provided false information concerning his tax delinquencies, including his Federal tax lien, and the full extent of his police record. The Government relies on the representations of the Applicant in response to the questions on the application to help determine an applicant's trustworthiness. Applicant minimized his answers by disclosing only one year that he had not filed or paid his taxes, when in fact it was six years. He also minimized his police record by disclosing only one drug charge, when there have been at least four. In response to the question about the lien, he denied having one placed against him, when in fact he currently has an outstanding Federal tax lien. There is no excuse for this carelessness and falsification. During his subject interview, in response to questions by the investigator, Applicant acknowledged having tax problems for many years and the IRS freezing his bank accounts in 2013. He claims it caused him to set up a payment plan. He also acknowledged state tax problems, as well as his involvement with the police and domestic violence convictions. Applicant was not truthful or honest when answering the questions discussed above. It can be assumed from these responses that he deliberately attempted to conceal this information from the government on his security clearance application.

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. 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks national security eligibility 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 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 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 or unwillingness to satisfy debts;

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

Applicant is indebted to ten separate creditors in an amount totaling in excess of \$20,000. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

- (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), 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.

Applicant provided insufficient information concerning his financial affairs that demonstrate appropriate mitigation. There is no evidence of any established payment agreements and his ability to follow the agreements to show a systematic method of payment. There is nothing done voluntarily to show that he has done anything to resolve his debts. He states that he set up a payment plan to pay his Federal taxes when the IRS froze his account. The evidence is not clear that any Federal taxes have been paid since Applicant's most recent credit report reflects a Federal tax lien in the amount of \$25,126 that has not been released. There is also no evidence of any payments made toward his state taxes. The remaining medical and consumer debt has not been addressed, and is still outstanding. Given these circumstances, there is no evidence that he has acted reasonably and responsibly. His actions demonstrate unreliability, untrustworthiness, and poor judgment.

Guideline E- Personal Conduct

The security concern for Personal Conduct 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 guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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.

Applicant provided false information concerning his tax delinquencies, including his Federal tax lien, and the full extent of his police record. He provided no explanation as to why he did not reveal his delinquent indebtedness on his security clearance application. He did not answer the question truthfully, nor did he take the time to determine the accuracy of his responses, which shows poor judgment, unreliability and untrustworthiness. There are no applicable conditions that could be mitigating under AG ¶ 17.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security 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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

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
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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

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge