DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-08461
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

November 1, 2017

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Decision

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MOGUL, Martin H., Administrative Judge:

Statement of the Case

On October 29, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and J.[1] (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

On December 8, 2016, Applicant submitted a written reply to the SOR (RSOR) with attachments, and he requested that his case be decided on the written record in lieu of a hearing. (Item 1.) On January 26, 2016, Department Counsel issued the

[1] I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered five documentary exhibits. (Items 1-5.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on March 3, 2017. Applicant submitted no additional documents into evidence. The case was assigned to this Administrative Judge on October 1, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact:

Applicant is 54 years old, and he is married. He is a high school graduate. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 3.)

Guideline F, Financial Considerations

The SOR lists six allegations (1.a. through 1.f.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. The delinquent debts total approximately $13,000. All of the SOR allegations were established by Item 4, and they will be discussed below in the order they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a delinquent account in the amount of $184. (Item 1.) Applicant admitted this debt in his RSOR. He wrote that he contacted this creditor and was told it was paid off on October 9, 2014. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of $1,103. (Item 1.) Applicant admitted this debt in his RSOR. He wrote that he contacted this creditor and was told it was paid off in June 2016. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of $6,257. (Item 1.) Applicant admitted this debt in his RSOR. He wrote that this debt remains unpaid, but he is making monthly payments. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of $1,091. (Item 1.) Applicant admitted this debt in his RSOR. He wrote that this debt remains unpaid, but he is making monthly payments. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent account in the amount of $617. (Item 1.) Applicant admitted this debt in his RSOR, and he wrote that this debt

remains unpaid, but he also wrote that he contacted the creditor and was told that this debt was paid. (Item 2.) No independent evidence was introduced to establish that this debt has been resolved or reduced.

1.f. It is alleged in the SOR that Applicant wages were garnished in November 2012 in the approximate amount of $3,900 to satisfy a debt to the creditor listed on 1.e., above. (Item 1.) Applicant admitted that his wages were garnished to pay off the debt, and when he contacted the creditor he was told the debt had been paid. (Item 2.)

Guideline J, Criminal Conduct

The SOR alleges that Applicant has engaged in criminal acts, which create doubt about his judgement, reliability, and trustworthiness. The SOR lists one allegations (2.a.) regarding criminal conduct, under Adjudicative Guideline J.

2.a. It is alleged in the SOR that in September 2014, Applicant was arrested and charged with Driving Under the Influence (DUI). Applicant plead guilty in December 2014. He was ordered to attend DUI classes, and Alcoholics Anonymous for three months, and his driver's license was restricted for six months. Applicant was also placed on five year summary probation, which does not end until December 2019. (Item 1.) Applicant admitted his DUI on his RSOR, and he wrote that he completed all of his classes and now he only drinks occasionally at home or at private parties, but he does not drink and drive. (Item 2.)

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 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 Executive Order (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. Applicant had many delinquent debts for several years. The evidence is sufficient to raise disqualifying conditions (a) and (c) as 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;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;

(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;

(g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

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

(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, 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(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.

Because no independent evidence has been introduced to establish the cause of Applicant's delinquent debt, or to show that he has made a good-faith effort to resolve or reduce this debt, I do not find that any of the mitigating factors under AG ¶ 20 have been established. Therefore, I find against Applicant under Guideline F.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) evidence . . . of criminal conduct, regardless of whether the individual was formally charges, prosecuted or convicted; and

(b) individual is currently on parole or probation.

Applicant was arrested for DUI as recently as September 2014 and convicted in December 2014. He remains on probation until December 2019. This offense gives rise to concerns about Applicant's judgment and reliability, because of the nature of the criminal offenses. The aforementioned disqualifying conditions have been established.

Because Applicant is still under probation for the criminal conduct that occurred in 2014, and he has not submitted any independent evidence to establish that he has demonstrated compliance with the court ordered requirements of this conviction, I do not find that any Criminal Conduct mitigating conditions are applicable under AG ¶ 32.

Applicant's criminal past continues to cast doubt on his trustworthiness and judgment. I, therefore, find Guideline J against 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(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 Guidelines F and J in my whole-person analysis.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations and Criminal Conduct security concerns under the whole-person concept.

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.-1.f.:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge