



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



In the matter of:

ISCR Case No. 15-08541

Applicant for Security Clearance

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

October 31, 2017

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On November 6, 2014, Applicant submitted a security clearance application (SF-86). On May 3, 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 and Guideline E, Personal Conduct. (Item 1.) 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 September 24, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On October 31, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 11 Items, was mailed to Applicant on November 1, 2016, and received by him on November 26, 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 11, and they were 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 41 years old. He has never married and has no children. He is employed with a defense contractor as a Linguist. He is seeking to retain 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 three delinquent debts totaling approximately \$26,000. Applicant admits to each of the delinquent accounts listed in the SOR.

Applicant's credit reports dated November 13, 2014; and May 5, 2009, confirm the indebtedness listed in the SOR. (Applicant's Exhibits 7 and 8.) Applicant has been working for his current employer since September 2014. (Government Exhibit 3.)

Applicant was born in Baghdad, Iraq. He became a naturalized United States citizen in January 2006. He and his family fled Iraq in 1991 to avoid persecution for their Catholic faith. The family fled to Syria and applied to the U.N. for refugee status. The United States recognized his refugee status and he came to the United States to live in 1996. Applicant has never served in the military. (Government Exhibit 4.)

From 2009 through 2013 Applicant worked as a linguist for a defense contractor. After his linguist position ended in May 2013, Applicant was unemployed for approximately six months. In September 2014, he started working for his current

employer and was deployed to Iraq in April 2015. He has been working there since then. (Government Exhibit 4.)

The following debts became owing and remain outstanding:

1(a) A judgement was filed against the Applicant in April 2014 in the approximate amount of \$25,000. Applicant explained to the investigator during his subject interview that he took out a personal loan from a co-worker in the amount of \$25,000 so that he could help his brother start a business, specifically a market that sells beer and wine. The business has not been doing well, and Applicant was unable to repay the loan. The co-worker filed a civil suit against the Applicant to obtain repayment. (Government Exhibit 11.) A judgment was entered against the Applicant in April 2014. After the SOR was issued, the Plaintiff filed a request to dismiss the writ garnishment on wages, which had been imposed by the court to recover payment of the judgment. The writ indicates that the parties had reached a payment agreement on June 17, 2016. There is no evidence in the record as to whether the court approved the payment plan.

1(b) A delinquent medical account was placed for collection in the approximate amount of \$632. Applicant indicated that this was a medical bill for surgery he had in 2013. Applicant believed that his insurance carrier should have paid the debt in full. Applicant resolved the debt on September 22, 2016. He provided a copy of a letter from the creditor indicating that the account balance has been resolved. (Applicant's Answer to SOR.)

1(c) A delinquent medical account was placed for collection in the approximate amount of \$547. Documentation in the record shows that the account had a zero balance on September 23, 2016. (Applicant's Answer to SOR.)

Guideline E –Personal Conduct

Applicant completed an Electronic Questionnaire for Investigations Processing (e-OIP) dated November 6, 2014. (Government Exhibit 3.) In response to Section 26 concerning his financial record, Applicant was asked if in the past seven years, he has had any bills or debts turned over to a collection agency? He was asked if in the past seven years, he has had a judgment entered against him? He was also asked if in the past seven years, he has had a lien placed against his property for failing to pay taxes or other debts? The Applicant answered, "NO" to each of the questions. (Government Exhibit 3.) Applicant has had bills turned over to collection agencies, and he has also had a judgment entered against him. I do not see that Applicant had a lien filed against his property for failing to pay taxes or other debts. Accordingly, his answer to that question was correctly answered. However, in regard to the other two questions, they were answered falsely. Applicant failed to disclose the three delinquent debts set forth above, one of which is a court judgment in response to the appropriate questions.

Applicant's claims that when he filled out the application, he made a mistake by checking the wrong box. Applicant had previously completed an earlier security clearance application in 2009, which shows that he knows how to reflect his delinquent

debts on the application. (Government Exhibit 9.) I find that he deliberately falsified his security clearance application dated November 6, 2014. He claims that he did disclose the judgment against him during his Counterintelligence (CI) interview. (Government Exhibit 10.) The CI interview occurred in December 2014, about a month after Applicant had completed and submitted his security clearance application. This was not the Applicant's first time filing out the security clearance application. There is no excuse for Applicant's failure to list his delinquent debts other than the fact that he did not want the Government to know about them.

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.

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 was excessively indebted to the creditors listed in the SOR. Applicant also has a history of making poor financial decisions. He has shown that he is willing to seek financial assistance by borrowing large sums of money from associates and or co-workers, not just accredited financial institutions. 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:

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

The record shows that about six months after the issuance of the SOR, Applicant paid off two of the smaller delinquent debts, specifically those listed in allegations 1.b., and 1.c. of the SOR. He claims that he is making payments to a co-worker to resolve the large debt set forth in 1.a. This remaining debt is a personal loan for \$25,000 that Applicant borrowed to help his brother open a market. Applicant could not afford to pay the debt and the co-worker obtained a judgment against him. This is strange, risky, and could place Applicant in a vulnerable position for manipulation. There is insufficient information in the record to show why Applicant did not follow the normal course to borrow money, which is to borrow the money from an accredited financial institution, instead of from his co-worker. There is also insufficient information in the record to show whether he is paying the judgment; how much he is paying; what the specific payment arrangements are and when they will be completed; and whether the payment arrangement was been approved by the court. There are many questions that remain unanswered. There are no clear indications that Applicant's financial problems are under control. AG ¶ 20 (d) does not provide full mitigation here.

Guideline E - Personal Conduct

The security concern for the personal conduct 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to disclose the SOR-listed debts on his security clearance application that include a judgment, a delinquent consumer account, and a delinquent medical account, in response to questions about his financial record on his security clearance application. He clearly knew at the time he completed the application that he had delinquent debts that had not been resolved. He willfully chose not to include them

on the e-QIP. He also failed to list the judgment that had been entered against him. This behavior indicates questionable judgment, unreliability, and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, none of them were established in this case. Applicant intentionally and deliberately attempted to conceal material information from the Government regarding his financial record because he did not list his delinquent debts on his 2014 security clearance application. Applicant did not make prompt or good-faith efforts to correct his falsification and concealment, nor was he ill advised. Falsifying material information is a serious offense, and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. He has not provided sufficient evidence to meet his burden of proof with respect to his personal conduct.

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 and Guideline E in my whole-person analysis. Applicant began working for the Defense Department since 2009, and at that time he first applied for a security clearance. He reapplied for a security clearance when he was hired by his current employer in September 2014. Applicant has not shown that he is financially responsible, nor has he shown that he is trustworthy. He understands that the Government relies on the answers to the questions on the application to determine ones eligibility for access to classified information. Applicant knows the importance of answering the questions accurately and truthfully. Applicant was not honest in answering the questions concerning his finances. By failing to list his delinquent debts in response to the questions about his finances, he has not demonstrated that he is candid, honest, and/or trustworthy.

Overall, the record evidence leaves me with questions and doubts as to Applicant's credibility as it would pertain to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Financial Considerations and the Personal Conduct 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:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline F:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge