



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



In the matter of:)
)
) ISCR Case: 15-08755
)
Applicant for Security Clearance)

Appearances

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

October 24, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant owes more than \$26,000 in unresolved debt. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On August 29, 2014, Applicant submitted a security clearance application. (Item 3.) On May 19, 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. (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 27, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On October 17, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on October 17, 2016, and received by him on October 31, 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 submitted additional information in response to the FORM on October 31, 2016 (Reply). In his Reply, he presented evidence that another Government agency had recently completed a periodic reinvestigation and adjudicated it favorably. On August 2, 2017, the case was assigned to me.

On October 2, 2017, I reopened the record in the case for Applicant to submit additional documentation on two issues. First, he was requested to provide information on the level of clearance adjudicated favorably in 2015 to determine if reciprocity was required in this case. Second, he was given the opportunity to address the specific financial allegations in this case. He submitted an email from his security officer and a written statement in response to the reopening of the record. Those documents are marked Applicant Exhibit (AE) A. The email from the security officer did not establish that he had a security clearance at the requested level, and the Government was unable to determine that reciprocity should be granted. Department Counsel had no objection to AE A, and it was admitted along with his Reply. Applicant did not object to Items 1 through 6. They are admitted into the record.

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 decisions¹ 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 60 years old. He is married to his third wife. He has worked for his current employer, a Federal contractor, since 2006. He served on active duty in the Marine Corps from 1974 to 1978. He was honorably discharged in 1978. He then served

¹SEAD 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."

in the Air Force Active Reserve from 1985 to 1988, and received an honorable discharge in March 1988. (Item 3.)

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. (Item 2.) His delinquent debts are also documented in a credit bureau report from November 2015. (Item 4.) Applicant attributed his delinquent debts to his November 2011 separation and 2012 divorce from his second wife. After Applicant separated from his ex-wife, he did not have sufficient funds to cover all of the debts incurred during his past marriage. (Item 5; Item 6.)

Applicant was indebted on two judgments in the respective amounts of \$17,763, and \$8,967, as alleged in SOR ¶¶ 1.a and 1.b. (Item 4 at 5.) They were filed in 2013 and 2012. Applicant claimed to have offered to “set-up a payment plan with both financial institutions” but his requests were denied. Both creditors requested payment in full, which Applicant was unable to afford. As a result, these debts remain unresolved. (Item 5; AE A.)

Applicant did not document any financial counseling or provide budget information from which to predict his future solvency. He offered no evidence to support findings concerning his character or trustworthiness, the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. 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 national security eligibility, the administrative judge must consider the pertinent adjudicative guidelines. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable or unwilling to repay his alleged delinquencies. These financial issues date back to 2012, and continue to date. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

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.

Applicant continues to owe more than \$26,000 for debts that became delinquent beginning in 2012. He offered no reasonable basis to conclude that such problems will not recur, so mitigation was not established under AG ¶ 20(a).

Applicant asserted that his delinquent debts arose from conditions that were beyond his control, namely his 2011 separation and 2012 divorce. However, he failed to show that he acted responsibly under the circumstances, as required for mitigation under AG ¶ 20(b). He also failed to provide evidence of financial counseling or efforts to resolve the debts that could establish mitigation under the provisions of AG ¶¶ 20(c) or 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for his choices. He continues to owe more than \$26,000 in debt that has been delinquent since 2012, and either cannot or chooses not to repay it. The potential for pressure, exploitation, or duress from his financial situation remains undiminished. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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
Subparagraphs 1.a and 1.b:	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 and a security clearance. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge