



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 16-00063

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

10/25/2017

Decision

WHITE, David M., Administrative Judge:

Applicant owes more than \$16,000 in delinquent debt, was debarred from government employment for seven years, and falsified his security clearance application. He offered no evidence of efforts or means to resolve his debts, or establishing rehabilitation. 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 22, 2015, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). (Item 3.) On June 10, 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 June 21, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 15, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant on July 18, 2016, and received by him on August 2, 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 did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded. Items 1 through 4 are admitted in 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* (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 set forth in Appendix A of SEAD 4. I considered the 2006 adjudicative guidelines, as well as the SEAD 4 AG, in determining Applicant's national security eligibility. My decision would be the same under either set of guidelines, but this decision is issued pursuant to the SEAD 4 AG.

Findings of Fact

Applicant is 59 years old and married. He earned an associate's degree in 1986, and a bachelor's degree in 2012. He has held his present employment as an engineering technician with a defense contractor since June 2015; and is seeking a security clearance in connection with that position. He was honorably discharged after serving in the Marine Corps from 1976 to 1984, and held a security clearance during that enlistment. (Item 3.)

Applicant admitted all of the allegations in the SOR without further explanation. A \$13,063 tax lien (not further identified in the record evidence) was entered against him in a state court in October 2005. This lien has not been released, and the underlying tax debt remains unpaid. (Item 2; Item 4.)

Applicant also has an unpaid \$105 telephone debt and seven unpaid medical debts, which range from \$14 to \$1,687 and total \$2,846. These eight debts were placed for collection in 2012 or 2013.² Four of the medical debts involve \$90 or less. (Item 2; Item 4.)

¹ 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."

² The medical debts alleged in SOR ¶¶ 1.h (\$90) and 1.i (\$14) do not appear on the record credit report (Item 4), but were admitted by Applicant. The date they were placed for collection is uncertain.

Applicant reported on his e-QIP that he worked for another defense contractor from November 2005 to April 2007, when he was fired for changing the test results on equipment he was testing. As a result of this conduct, and as alleged in SOR ¶ 2.a, the Department of the Navy debarred him from government employment for seven years in May 2007. (Item 2; Item 3 at 14-15, 47.)

Applicant answered, “No,” in response to all questions about his financial record in Section 26 of his August 2015 e-QIP. SOR ¶¶ 2.b and 2.c alleged that these answers were false, and Applicant admitted that he deliberately failed to report the adverse financial information set forth in SOR ¶¶ 1.a through 1.i. SOR ¶ 2.b alleges that his falsification in the subsection, “Delinquency Involving Enforcement,” related to his denial that he had a lien placed against him for failure to pay taxes or other debts, “**In the past seven (7) years.**” (Emphasis in original.) This allegation claims that the lien that was entered against him in October 2005 should have been disclosed in response to this question. However, that lien was placed against him more than nine years before the date he signed and certified his e-QIP. Accordingly, the evidence does not support the allegation that this answer was false. (Item 3.)

Applicant did not document any financial counseling. He provided no budget information from which to predict his future solvency, or his ability to make any payments toward his delinquent debts. He offered no evidence to support findings concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures there. 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 adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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 *also* 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 three conditions that could raise security concerns and may be disqualifying in this case:³

- (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 has incurred more than \$16,000 in delinquent debts since 2005. He documented neither the ability nor any efforts to satisfy these debts, five of which involved \$105 or less including one for only \$14. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted 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's multiple delinquent debts are substantial and ongoing. His failure to address any of these debts in a meaningful way over the past twelve years creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

³ The record contains insufficient evidence to support security concerns under AG ¶ 19(f), concerning failure to file returns or pay Federal, state, or local income taxes as required. SOR ¶ 1.a does not allege, and the record does not otherwise identify, the source or type of tax lien as reported in Item 4.

Applicant neither claimed that his debts arose from circumstances beyond his control, nor showed that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b). He offered no evidence of financial counseling or budget information establishing solvency going forward or ability to repay his delinquencies. He failed to demonstrate that these problems are being resolved, are under control, or that a good-faith effort toward resolution has actually been initiated. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns pertaining to personal conduct:

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 the national security investigative or adjudicative processes.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying 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 clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

Applicant is an educated and experienced individual who has previously applied for and been granted a security clearance. He admitted his deliberate omission, concealment, and falsification of relevant facts concerning his delinquent debts on his 2015 e-QIP. The evidence establishes significant security concerns under AG ¶ 16(a). As noted above, his denial concerning tax liens placed against him during the preceding seven years was not false.

Applicant admitted that was fired and debarred from employment in Government work for seven years as a result of his falsification of equipment test results while working under a Navy contract. This evidence establishes substantial security concerns under AG ¶¶ 16(d)(1) through 16(d)(4).

AG ¶ 17 includes three conditions that could mitigate security concerns arising from Applicant's personal conduct:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (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.

Applicant did not provide evidence that would support mitigation under any of the foregoing conditions.

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 \$16,000 in delinquent debts including an unresolved 2005 tax lien. He falsified his e-QIP concerning his financial problems, and was fired and debarred for seven years after falsifying equipment tests results while working under a Government contract in 2007. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates significant doubt as to Applicant's judgment, reliability, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

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 through 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.c:	Against 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 interests of national security to grant Applicant a security clearance. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge