



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 16-00598

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

12/01/2017

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On August 9, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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* (AG) effective within the DOD on September 1, 2006.

On September 14, 2016, Applicant answered the SOR allegations, admitting subparagraphs 1.a through 1.c, and denying subparagraph 1.d. He requested a decision on the written record. On October 27, 2016, Department Counsel prepared a File of

Relevant Material (FORM). Applicant received the FORM on November 7, 2016, and did not respond. The case was assigned to me on August 8, 2017.

In the FORM, Department Counsel amended the SOR to include six additional allegations under the financial considerations guideline (subparagraphs 1.e-1.j). On October 23, 2017, I re-opened the record, extending it to November 23, 2017, to allow Applicant the opportunity to answer the new allegations, and to submit any additional information pertinent to the disposition of these allegations. Applicant neither answered the allegations, nor submitted any additional evidence. I will construe his non-answer as a denial of the amended allegations.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Evidentiary Ruling

Item 4 is an unauthenticated Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on September 24, 2015. Department Counsel notified Applicant of his right to object to its admissibility. Applicant did not respond, therefore, I will admit Item 4 and incorporate it into the record.

Findings of Fact

Applicant is a 55-year-old married man with one child, age 11. He is a Navy veteran, serving from 1986 through his retirement in 2006. Since then, he has worked for a defense contractor as an outside machinist. (Item 3 at 10) He is a high school graduate, and is currently attending community college, working towards an associate's degree. (Item 3 at 9)

Applicant filed for Chapter 7 bankruptcy in September 2007. (Item 6 at 1) Under the plan, \$19,284 was discharged. (Item 6 at 27)

Applicant filed for Chapter 13 bankruptcy protection in December 2014, as alleged in subparagraph 1.a. Approximately \$55,000 of debt was included in the plan. (Item 4 at 2) Under the terms of the plan, \$880 per month was to be disbursed to the creditors through the bankruptcy plan. (Item 5 at 40) On September 10, 2015, the court dismissed the bankruptcy because of Applicant's failure to make good-faith payments consistent with the plan. (Item 5 at 43)

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Currently, Applicant owes approximately \$4,000 in delinquent state income taxes for tax years 2012 and 2013, as alleged in subparagraph 1.c. (Item 2 at 2) As of at least February 2015, he has been paying the state revenue authority, per an agreement, \$232 each month. (Item 11)

Subparagraph 1.d alleges a delinquency for \$30,680 of dental work. Applicant denies this debt, and contends that all of his dental bills were paid upon the completion of the dental work. (Item 2 at 2) Applicant's dentist is retired. The dentist who purchased the practice researched Applicant's account and confirmed that he owed no money. (Item 2 at 4)

Subparagraph 1.e through 1.j are miscellaneous judgments entered against Applicant in favor of various creditors, totaling approximately \$16,000. (Item 4 at 3; Item 8-10) They remain outstanding.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).²

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 information. . . .

Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(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."

The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit

² The factors under AG ¶ 2(d) are as follows:

(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.

counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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; and

AG ¶ 20(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.

Applicant has been satisfying the state income tax delinquency, alleged in subparagraph 1.c, through a payment plan since early 2015. AG ¶ 20(g) applies. He provided documented proof supporting his dispute of the dental bill alleged in subparagraph 1.d. AG ¶ 20(e) applies. Consequently, I resolve subparagraphs 1.c and 1.d in Applicant's favor. As for the remaining delinquencies, Applicant failed to provide any documentary evidence about their current status, and he did not explain why he did not comply with the Chapter 13 bankruptcy plan. None of the remaining mitigating conditions applies.

Whole-Person Concept

Given Applicant's history of financial problems, his recent failure to follow through on a Chapter 13 bankruptcy plan, and the amount of debt that remains outstanding, I conclude that he has failed to mitigate the financial considerations security concern.

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
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c – 1.d:	For Applicant
Subparagraphs 1.e-1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge