



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



In the matter of:

ISCR Case No. 16-01307

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

October 25, 2017

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On May 1, 2015, Applicant submitted a security clearance application (SF-86). On July 15, 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 (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*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on October 10, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On November 28, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was mailed to Applicant on November 30, 2016, and received by him on December 16, 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 responded to the FORM on January 2017, and submitted one exhibit, referred to as Applicant's Exhibit A, which was admitted into evidence. Applicant did not object to Items 1 through 5, 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 54 years old. He is married. He is employed with a defense contractor as an Estimating Supervisor. 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 ten debts totaling approximately \$84,000. Two debts, SOR allegations 1.f. and 1.j., have been paid. Five debts are student loans, one is a medical bill, one is for a delinquent mortgage account, and one is for a consumer debt. Applicant admits allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.j , set forth in the SOR. He denies allegations 1.g., 1.h., and 1.i.

Credit Reports of Applicant dated June 18, 2015 and June 16, 2016, confirm the indebtedness listed in the SOR. (Applicant's Exhibits 4 and 5.) Applicant has been working for his current employer since December 2012.

The following debts became owing and remain outstanding:

1.a. A delinquent student loan account owed to the US Department of Education was placed for collection in the approximate amount of \$2,518. Applicant states that the debt should have been paid through his GI bill benefits. He claims that he has or will dispute the matter. He has provided no documentary evidence to support his averment. The account remains owing.

1.b. A delinquent student loan account owed to the US Department of Education was placed for collection in the approximate amount of \$4,514. Applicant states that the debt should have been paid through his GI bill benefits. He claims that he has or will dispute the matter. He has provided no documentary evidence to support his averment. The account remains owing.

1.c. A delinquent student loan account owed to the US Department of Education was placed for collection in the approximate amount of \$5,804. Applicant states that the debt should have been paid through his GI bill benefits. He claims that he has or will dispute the matter. He has provided no documentary evidence to support his averment. The account remains owing.

1.d. A delinquent student loan account owed to the US Department of Education was placed for collection in the approximate amount of \$9,002. Applicant states that the debt should have been paid through his GI bill benefits. He claims that he has or will dispute the matter and that this debt is a duplicate of the debt set forth in 1(e). He has provided no documentary evidence to support his averment. The account remains owing.

1.e. A delinquent student loan account owed to the US Department of Education was placed for collection in the approximate amount of \$9,318. Applicant states that the debt should have been paid through his GI bill benefits. He claims that he has or will dispute the matter and this debt is a duplicate of the debt set forth in 1(d). He has provided no documentary evidence to support his averment. The account remains owing.

1.f. A delinquent account owed to a creditor was placed for collection in the approximate amount of \$379. Applicant settled the debt and provided a copy of the payment transaction dated February 4, 2016.

1.g. A delinquent mortgage account owed to a creditor was 120 days past due or greater in the approximate amount of \$49,751 with a total balance of \$98,827. Applicant claims that due to an unexpected interest rate increase, he fell behind on the payments and hired a bankruptcy attorney for assistance. Applicant states that his bankruptcy attorney found the account to be charged off due to the home foreclosure in 2007-2008. The attorney advised him to disregard the claim. He has provided no documentary evidence to support his averment. The account remains owing.

1.h. A delinquent medical account was placed for collection in the approximate amount of \$3,422. Applicant believes this is the cost of an ambulance that Tricare Prime settled years ago. He has provided no documentary evidence to support his averment. The account remains owing.

1.i. A delinquent account owed to a creditor was placed for collection in the approximate amount of \$232. Applicant claims that the debt was settled a while back. He has provided no documentary evidence to support his averment. The account remains owing.

1.j. Applicant was cited on April 30, 2015 for a traffic violation. There is an active warrant against him since July 10, 2015, for his failure to pay the fine. Applicant settled this account on or about April 21, 2016. (See Applicant's Response to the FORM.)

There is no documentation in the record to show that Applicant has made any financial arrangements or that he has followed through with any agreements he may have made with any of his creditors. Thus, each of the debts listed in the SOR , with the exception of 1.f. and 1.j., continue to remain delinquent and owing.

### **Guideline E – Personal Conduct**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-OIP) dated May 1, 2015. (Government Exhibit 2.) In response to Section 26 concerning his financial record, Applicant was asked if in the past seven years, has he failed to pay Federal, state, or other taxes when required by law or ordinance?" He was also asked if in the past seven years if he had a lien placed against his property for failing to pay taxes or other debts?" The Applicant answered "NO" to both questions. These were false responses. Applicant failed to disclose state tax liens entered against him in 2011 and 2012 which totaled approximately \$10,900. (Government Exhibit 2.)

In his answer to the SOR, Applicant stated that his wife takes care of the finances and taxes. He states that at that time, he had no knowledge of the liens. He and his wife do not talk much and not about money. However, during his personal subject interviews that took place between December 7, 2015 and December 12, 2016, Applicant stated that he was aware of the liens and did not disclose them because they had been paid. This contradiction in evidence provided by the Applicant further calls his credibility and truthfulness into question. (See ROI.)

### **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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 is excessively indebted to the creditors listed in the SOR. He has failed to prove that he has done anything to resolve all but two of his debts. 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:

- (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.

Applicant states that he is, and has been working to resolve his delinquent debts, but he has provided no documentation to substantiate his averments. He has failed to establish that he acted reasonably, responsibly or in good-faith to repay his financial obligations or establish a meaningful track record of repayment. Accordingly it is found that all but two of his debts remain owing. Furthermore, Applicant has not demonstrated that future financial problems are unlikely. There are no indications that his financial problems are being resolved or are under control.

### **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 two liens filed against him in 2011 and 2012 which totaled \$10,900, in response to questions about his financial record on his security clearance application. Based upon information he gave the investigator during his security clearance subject interview, he clearly knew that he had liens and claims that they were paid. Applicant has provided no evidence to show that they have in fact been resolved. Thus, it can be logically concluded that he willfully chose not to include them on the e-QIP. 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 the liens that were entered against him. He claims that his wife handles the finances and taxes and he does talk with her about these matters, and he did not know about them. This is unacceptable, especially since Applicant told the investigator that the liens had been paid. 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 states that he is disputing the student loan debts and has resolved his other debts, but has failed to provide any documentation to show proof of payment. Furthermore, Applicant's credibility is in question. He must understand the need to ensure that only individuals with whom the Government can trust should be provided access to classified information. Applicant has not demonstrated that he is candid, honest, and/or trustworthy.

Overall, the record evidence leaves me with questions and or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and 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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

Paragraph 2, Guideline F:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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### **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.

Darlene Lokey Anderson  
Administrative Judge