



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



In the matter of:

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ISCR Case No. 16-01381

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

11/01/2017

Decision

Curry, Marc E., Administrative Judge:

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

Statement of the Case

On September 30, 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, and 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 January 23, 2017, Applicant answered the SOR, admitting all of the allegations, and requested a decision based on the written record instead of a hearing. On February

14, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 14, 2017, and did not respond. The case was assigned to me on October 1, 2017.

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.

Evidentiary Ruling

Item 4 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on May 28, 2014. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

Findings of Fact

Applicant is a 29-year-old single man with one child. He is a Navy veteran, serving from 2009 through his honorable discharge in 2014. Since then, he has worked for a defense contractor as a flight operations mechanic. (Item 3 at 22)

Applicant admits that he has more than \$36,000 of delinquent debt. Subparagraphs 1.a through 1.c are medical accounts totaling \$146. Applicant noted that he was now able to settle these debts, but provided no proof that he actually began settling them. (Item 2 at 1)

Subparagraph 1.d totals \$166. Applicant did not respond to the allegation. Subparagraphs 1.e and 1.f are delinquent student loan accounts totaling approximately \$3,100. Applicant contends that he is paying them through a loan rehabilitation program, but provided no documentary evidence. Applicant contests subparagraph 1.g, a cell phone bill totaling \$1,512. He provided no evidence substantiating the basis of the dispute.

Subparagraphs 1.h through 1.j, 1.l through 1.q, and 1.t through 1.v total approximately \$29,200. Applicant contends that as of the date of his answer he was going to include these debts in a bankruptcy petition that he was in the process of preparing. He provided no further evidence.

Applicant contends that he satisfied the debt alleged in subparagraph 1.k, totaling \$212. He provided no documentary evidence.

Subparagraphs 1.r and 1.s are delinquent loans owed to a credit union, totaling \$550. In Applicant's answer, he promised to repay them as soon as possible. (Item 2 at 3)

The record contains correspondence from the credit union referencing five loans and confirming that Applicant had made \$10 payments on each (Item 2 at 13-17) However, it is unclear from the record which of these confirmation letters correspond to subparagraphs 1.r and 1.s.

Subparagraph 1.w totals \$411. Applicant contends that he is in the process of getting this debt removed from his credit report. He provided no documentary evidence.

Applicant asserted that his financial situation would improve once the Government approved his application for disability benefits. He provided no evidence of ever having applied for disability benefits.

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).¹

¹ 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

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," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

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 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; and

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.

Applicant's failure to provide any explanation for why he incurred the delinquent debt, and his failure to provide any documentary evidence about the current status 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.

debt, renders all of the mitigating conditions inapplicable. Applicant failed to mitigate the financial considerations security concerns.

Whole-Person Concept

At different times during the investigative process, Applicant noted that he might be eligible for disability benefits. This could be potentially mitigating with respect to the cause of Applicant's financial problems and his ability to remediate them. However, Applicant first suggested that he may be eligible for disability benefits two years ago and never provided any evidence that the Government had approved disability benefits, or that he ever actually applied for disability benefits. There are no other whole-person factors outside of those that I considered in my evaluation of the disqualifying and mitigating conditions.

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.w:	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