



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



In the matter of:

ISCR Case No. 16-01712

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

November 1, 2017

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant incurred more than \$66,000 in delinquent debt over the past nine years, most of which he has been unable or unwilling to repay. Resulting security concerns were not mitigated. Based upon a review of the pleadings, testimony, and exhibits, national security eligibility is denied.

History of Case

On September 15, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 1, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F: Financial Considerations. 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on October 14, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 25, 2017. DOHA issued a Notice of Hearing on May 4, 2017, setting the hearing for July 27, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant testified and offered Exhibits (AE) A through H into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until August 10, 2017, to permit submission of additional evidence. On August 8, 2017, Applicant submitted additional exhibits, which were marked AE I through AE M and admitted, without objection. DOHA received the hearing transcript (Tr.) on August 7, 2017.

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*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations 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 promulgated 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. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant is employed as an electrical plater, and is applying to renew his security clearance in connection with that work. (GE 1; Tr. 36.) He admitted the allegations in SOR ¶¶ 1.k and 1.o. He denied the allegations in SOR ¶¶ 1.a through 1.j, 1.l through 1.n, and 1.p. (Answer; Tr. 9-10.) Applicant's admissions are incorporated in the findings below.

Applicant is 61 years old. He is married. He has an adult son and an adult stepson. He has worked for his employer for 28 years and has held a security clearance for the duration of his employment. (GE 1: Tr. 31-32, 39.)

Applicant attributed his delinquent debts to the nationwide economic downturn in 2008, and his wife's seasonal employment. He explained that his work hours were reduced due to the economic downturn. He submitted earning statements that show his income declined between 2008 and 2016 from \$57,000 annually to \$38,000 annually. Further, in 2008 interest rates on his credit cards increased, and Applicant could no longer afford to make payments on them. (AE B; AE C; AE H; Tr. 28, 34, 40, 48.)

SOR ¶¶ 1.a through 1.j alleged ten delinquent student loans that Applicant obtained in approximately 2010, totaling an estimated \$39,000. Applicant claimed he asked this creditor to set up automatic payments from his bank account, but was told

that was not possible unless he defaulted on the loans. Beginning in August 2011, he ceased voluntary payments on these loans. As a result, Applicant's wages have been garnished by this creditor since 2011 to satisfy this debt. He has not negotiated a separate payment arrangement with this creditor, because the garnishment is automatic and forces him to repay this debt on a monthly basis. He is "using it as a tool to get done what [he] need[s] to get done as fast as possible." (Tr. 44.) The garnishment is fixed at 16% or 17% of Applicant's gross income. The amount garnished fluctuates, depending the number of hours Applicant works in a pay period. His pay has been garnished regularly for the past six years, as documented in his transaction report. He has resolved approximately \$31,000 of this original debt plus accrued interest. However, \$30,757.36 remains owing. (GE 3; GE 6; GE 7; AE C; AE D; AE E; AE F; AE G; AE J; AE K; AE L; AE M; AE N; Tr. 42-47.)

SOR ¶ 1.k alleged Applicant was indebted on a collection account in the amount of \$277. This debt was for unpaid insurance and was placed for collections in 2011. He indicated he would have repaid this account, but the debt has been sold. He does not know who currently holds this account. It is unresolved. (GE 7; AE H; Tr. 33-34, 48-49.)

SOR ¶ 1.l alleged Applicant was indebted on a charged-off account in the amount of \$6,034. This debt was for a credit card that was charged-off in October 2015. It is unresolved. (GE 7; Tr. 49-51.)

SOR ¶ 1.m alleged Applicant was indebted on a collection account in the amount of \$1,574. Applicant contested this debt in 2008 because he believed that the charges were in excess of the contractual agreement. However, he produced no documentation to support his claim. His credit report, dated October 2015, reflects that this account was opened in March 2011. This debt is unresolved. (GE 7; AE H; Tr. 51-53.)

SOR ¶ 1.n alleged Applicant was indebted on a collection account in the amount of \$8,462. This debt was reported delinquent in 2015. Applicant does not recognize this account. It is unresolved. (GE 7; Tr. 53-54.)

SOR ¶ 1.o alleged Applicant was indebted on a collection account in the amount of \$6,600. Applicant testified this debt was "one of the first ones [he was] going to pay." However, he failed to produce documentation of any action to resolve this debt. This debt has been delinquent since 2009. (GE 7; Tr. 55.)

SOR ¶ 1.p alleged Applicant was indebted on a collection account in the amount of \$4,704. Applicant intends to resolve this debt, but does not have the funds to do so at the current time. It has been delinquent since 2015. (GE 7; Tr. 55-56.)

Applicant testified that he no longer relies on credit cards. His wife is taking classes to improve her potential to earn additional income. (Tr. 58.) He indicated his credit score has slowly improved since 2004. (AE A.) His personal financial statement showed he had approximately \$138 left over after his monthly expenses were satisfied, and was making payments on one \$800 unalleged debt out of those available funds.

(GE 4.) Applicant has \$5,000 in savings. (Tr. 61.) He files his state and Federal income tax returns on time annually and does not owe any unpaid taxes. (Tr. 63-64.)

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. Directive ¶ E3.1.15 says that 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:

- (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 paying his student loans through a garnishment from his pay. He failed to document payments to any of his other creditors. He has been unable or unwilling to repay these debts. These financial issues date back over nine years, and continue to date. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s alleged 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;

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

(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 continues to owe more than \$30,000 in student loan debt. His other SOR alleged debts remain unaddressed and unresolved. His financial statement, showing a \$138 monthly surplus, does not demonstrate sufficient funds to resolve his remaining debts. While his wife is working to increase her earning potential, he failed to establish that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that some of his debt problems were caused by his underemployment, and his wife's seasonal job. However, Applicant provided no information as to how he has been responsibly handling his debts while they were arising. Forcing a creditor to seek garnishment does not establish responsible action with respect to the student loans. Mitigation was not established under AG ¶ 20(b).

No evidence of financial counseling from a legitimate and credible source was provided. Further, there are no clear indications that Applicant's financial problems are under control. While his student loans are being resolved through garnishment, there is no evidence of a good-faith effort to resolve that debt or others. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Applicant produced neither evidence to establish he has a reasonable basis to dispute the legitimacy of any of his past-due debts, nor documented proof to substantiate any basis of the dispute. AG ¶¶ 20(e) has not been established.

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 to incur substantial debt and not repay it. He continues to owe more than \$58,000 in delinquent debt that he accumulated over the past nine years, and either could not or chose not to repay. There is insufficient evidence of rehabilitation and the potential for pressure, exploitation, or duress 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 through 1.p: Against 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 eligibility for a security clearance. National security eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge