



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01913

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

10/27/2017

Decision

Curry, Marc E., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. Clearance is denied.

Statement of the Case

On October 1, 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 December 16, 2016, Applicant answered the SOR allegations. He did not explicitly admit or deny them; however, he discussed the payment status of each of the alleged debts. Therefore, I will consider these responses as admissions. Applicant

requested a decision based on the written record instead of a hearing. On January 18, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 7, 2017, He did not file a response. 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.

Findings of Fact

Applicant is a 35-year-old man. He has a high school education and has earned some college credits. Since 2015, he has worked for a defense contractor as a quality control officer. (Item 3 at 11)

The SOR alleges \$5,800 of delinquent debt. Applicant contends that they are all paid in full, but only provided documentary evidence establishing that a \$342 phone bill, as alleged in subparagraph 1.g, has been paid.

Applicant did not file his 2014 federal or state income tax returns. He characterizes this failure as an oversight and contends that he is "working to resolve" his federal income tax return and is paying his 2014 state income taxes through a payment plan. (Item 1 at 4) He provided no documentary evidence to support his statements.

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 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. 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

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.” His failure to file his 2014 federal and state income tax returns triggers the application of 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(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

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 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.

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 debt; 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 provided no explanation for incurring his delinquencies. Except for subparagraph 1.g, which I find in his favor, he provided no documentary evidence supporting his contention that he has satisfied the delinquencies. Similarly, he provided no proof that he filed his 2014 state income return, or evidence documenting that he is negotiating with the Internal Revenue Service with respect to his 2014 federal income tax return, as he contends. I conclude none of the mitigating conditions applies. Applicant has failed to mitigate the financial considerations security concern.

Whole-Person Concept

There is no additional information about Applicant on file to balance with the information that I discussed in my analysis of the disqualifying and mitigating conditions above.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h – 1.k:	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 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