



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

In the matter of:)	
)	
)	ISCR Case No. 16-01934
)	
Applicant for Security Clearance)	

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

11/07/2017

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns generated by his delinquent debts and his failure to disclose them, as required, on his security clearance application. Clearance is denied.

Statement of the Case

On July 7, 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 Guideline E, personal conduct. The SOR explained 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 effective within the DOD on September 1, 2006.

On July 26, 2016, Applicant answered the SOR, admitting all of the allegations in Paragraph 1, except subparagraphs 1.b, 1.c, 1.f, 1.h, and 1.i. He neither answered, nor denied the personal conduct allegation in Paragraph 2. I will construe his non-answer as a denial.

Applicant requested a decision based on the written record instead of a hearing. On September 23, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on September 26, 2016, and was notified of his opportunity to file a response within 30 days of receipt. He did not respond. The case was assigned to me on July 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.¹

Evidentiary Ruling

Item 4 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on March 18, 2015. 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 55-year-old married man with four adult children. He is a high school graduate who served four years in the U.S. Army from 1980 through his honorable discharge in 1984. (Item 3 at 12) He has spent the majority of his career working as a security guard.

The SOR alleges \$43,152 of delinquent debt. He provided no explanation of how he incurred the admitted debts, nor any evidence that he has done anything to resolve them. Applicant denies five of the SOR debts, approximately \$10,000 (subparagraphs 1.b, 1.c, 1.f, 1.h, and 1.i). He provided no explanation substantiating the basis of the disputed debts. He did not disclose relevant information about his finances on his security clearance application, as required (subparagraph 2.a)

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

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 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).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

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.

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

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

Applicant provided no information detailing how he incurred these debts, nor any evidence of what he is doing to resolve them. As for the disputed debts, he provided no information substantiating the basis of the dispute, or detailing steps to resolve them. Under these circumstances, none of the mitigating conditions applies. I conclude Applicant has failed to mitigate the financial considerations security concern

Personal Conduct

Under this guideline, "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 or sensitive information." Moreover, "of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." (AG ¶ 15) Applicant's omission of relevant, material financial information from his 2015 security clearance application raises the issue of whether AG ¶ 16(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 national security eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

Applicant provided no explanation for the omissions. Therefore, he has failed to meet his burden. AG ¶ 16(a) applies without mitigation.

Whole-Person Concept

I considered the whole-person concept in my adjudication of this case and it does not warrant a favorable conclusion.

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.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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