



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



In the matter of:

ISCR Case No. 16-02096

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

11/29/2017

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$16,000 in delinquent debt over the past six years, most of which he has been unable or unwilling to repay. He failed to demonstrate a workable plan to resolve his financial issues, or progress toward implementing one. He falsified two answers on his Electronic Questionnaires for Investigations Processing (e-QIP), and was arrested on criminal charges four times from 2013 through 2016. Resulting security concerns were not mitigated. Based upon a review of the testimony, pleadings and exhibits, national security eligibility is denied.

History of Case

On May 6, 2015, Applicant submitted an e-QIP for reinvestigation of his security clearance eligibility. On September 6, 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), and Guideline E (Personal Conduct). 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 17, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 19, 2016. DOHA issued a Notice of Hearing on April 27, 2017, setting the hearing for May 15, 2017. On that date, Department Counsel requested to amend the SOR by adding paragraph 3, which contained five allegations (§§ 3.a through 3.e) under Guideline J (Criminal Conduct). Applicant had no objection to the amendment, and the request was granted. Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence, which were admitted without objection. Applicant testified, but offered no documents into evidence during the hearing. I granted Applicant's request to leave the record open until June 5, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on May 23, 2017. Applicant submitted documentary exhibits on May 24, and June 1, 2017, which were marked Applicant Exhibits (AE) A and B, and admitted without objection.

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 a quality insurance inspector by a Federal contractor, and is applying to continue his security clearance in connection with that work. The SOR alleged that Applicant owed 12 delinquent debts, totaling \$16,112; deliberately falsified material facts in response to two questions on his 2015 e-QIP; and was charged with six criminal offenses after being arrested four times from 2013 through 2016. Applicant admitted all of the SOR allegations, with some explanations. (Answer; Tr. 22-25.) Applicant's admissions are incorporated in the findings below.

Applicant is 48 years old. He is a high school graduate, is married for the second time, and has three children. He has no previous military or Federal government service, but has been continuously employed since at least January 2005. (GE 1; Tr. 6, 39-40.)

Applicant admitted that he owed all 12 of the delinquent debts alleged in the SOR. These debts ranged from \$83 to \$7,698 and totaled \$16,112. They became delinquent between 2011 and 2016. Six of the debts were for less than \$200. Their existence is confirmed by the record credit reports. On May 23, and 24, 2017, after his hearing, Applicant repaid four of these debts (alleged in SOR ¶¶ 1.d through 1.g), which totaled \$786. This reduced his total outstanding delinquent debt to \$15,326. Applicant offered no evidence of circumstances beyond his control that led to any of these debts. He has not undergone any financial or credit counseling despite having repeatedly said in his Answer, concerning each alleged debt, "I am working with credit consolidations to get this worked out." (Answer; GE 2; GE 3; GE 4; GE 5; AE A; AE B; Tr. 40-57.)

Applicant admitted that he falsified material facts on his e-QIP by answering, "No," in response to questions about his police record and his financial delinquencies. He deliberately failed to disclose his 2013 arrest for Driving Under the Influence (DUI) in his 'Section 22 - Police Record' response, and the delinquencies discussed above in his 'Section 26 - Financial Record' response. (Answer; GE 1; Tr. 58-59, 74-75.)

Applicant was arrested on February 2, 2013, and charged with DUI and Driving Without an Operator's License. He was convicted of both offenses, and sentenced to 180 days in jail (suspended). His operator license was suspended for 15 months and he was ordered to attend substance abuse classes. On or about November 14, 2015, Applicant was arrested for Domestic Violence Assault – 4th Degree after a neighbor called police to respond to a loud argument that Applicant had with his wife late at night. She picked him up from jail the next morning, and declined to press charges so no prosecution took place. On November 3, 2016, Applicant was arrested again for Assault – 4th Degree and Malicious Mischief – 3rd Degree when he broke a window while again arguing with his wife. He was convicted of both charges and sentenced to serve a maximum of 364 days in jail. This was suspended and he was placed on probation for one year, which he continues to serve. He was also required to attend weekly domestic violence and parenting classes and a No Contact/Protection Order was issued against him. On November 7, 2016, he was arrested for violating the No Contact/Protection Order. He was convicted of this offense and sentenced to a maximum of 30 days in jail, of which he served 20 days. (GE 7; GE 8; GE 9; Tr. 22-25, 67-74.)

Applicant provided no budget information from which to predict his future solvency, or his ability to make payments toward his delinquent debts. He offered no evidence to support findings concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures. No extrinsic evidence of good character, judgment, responsibility or rehabilitation was submitted. His testimony, however, was forthright and credible.

Policies

When evaluating an applicant's 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 incurred 12 delinquent debts, totaling more than \$16,000, over the past six years. He resolved four of those debts after his hearing. However, more than \$15,000 in delinquent debt remains, for which he demonstrated neither progress toward resolution nor a basis for dispute. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted 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 \$15,000 to numerous creditors for debts incurred while he has been continuously employed over the past six years. Applicant belatedly resolved four of the smaller SOR-alleged debts, but demonstrated no effort to address any of the remaining delinquencies. He did not demonstrate a legitimate basis to dispute his responsibility for any of these debts. Accordingly, Applicant failed to establish sufficient mitigation of security concerns arising from his financial irresponsibility under any of these conditions.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns pertaining to personal conduct:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise security concerns and may be disqualifying in this case:

(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 clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Applicant is an experienced individual who has previously applied for and been granted a security clearance. He admitted his deliberate omission, concealment, and falsification of relevant facts concerning his delinquent debts and his criminal record on his 2015 e-QIP. This evidence establishes significant security concerns under AG ¶ 16(a).

AG ¶ 17 includes three conditions that could mitigate security concerns arising from Applicant's potentially disqualifying personal conduct:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

(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.

Applicant did not provide, and the record does not otherwise contain, evidence that would support mitigation under any of the foregoing conditions.

Guideline J: Criminal Conduct

¶ 30: The security concern relating to the guideline for criminal conduct is set out in AG

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 contains five disqualifying conditions that could raise security concerns and may be disqualifying. Two of those conditions were established, as discussed below:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's criminal conduct in 2013, 2015, and 2016 involved a DUI, Domestic Violence Assaults, and Violating a No Contact/Protection Order. Charges were dropped for the 2015 incident at his wife's request, but all of the underlying conduct, to which he admitted, casts doubt on his judgment and trustworthiness. Security concerns under this guideline were raised by this evidence.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's crimes were committed over the past four years, and the most recent three offenses of which he was convicted took place two months after the issuance of his original SOR. He admitted their commission, and failed to demonstrate sufficient evidence of rehabilitation, maturity, trustworthiness, or good judgment. Mitigation of the criminal conduct concerns was not 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 decisions that led to substantial debt he has been unable or unwilling to repay. He continues to owe more than \$15,000 in delinquent debt that he accumulated over the past six years and either could not, or chose not to, repay. His criminal conduct and falsifications on his e-QIP were intentional and recent. There is insufficient evidence of rehabilitation or a track record of compliance with financial, security-related, or legal obligations. The potential for pressure, exploitation, or duress remains substantial. Overall, the evidence creates significant doubt as to Applicant's trustworthiness, reliability, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations, personal conduct, or criminal conduct.

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
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraphs 1.d through 1.g:	For Applicant
Subparagraphs 1.h through 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a through 3.e:	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.

DAVID M. WHITE
Administrative Judge