



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



In the matter of:

ISCR Case No. 16-02152

Applicant for Security Clearance

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

November 1, 2017

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On October 11, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E.¹ (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

On November 22, 2016, Applicant submitted a written reply to the SOR, and he requested that his case be decided on the written record in lieu of a hearing. (Item 1.) On January 6, 2017, Department Counsel issued the Department's written case. A

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered five documentary exhibits. (Items 1-5.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 24, 2017. Applicant submitted one additional document, which has been identified and entered into evidence as Item A. The case was assigned to this Administrative Judge on October 1, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact:

Applicant is 34 years old. He is divorced and has two children. He completed some college courses. Applicant served in the United States Air Force and received an Honorable Discharge. He is employed as mechanic by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 2.)

Guideline F, Financial Considerations

The SOR lists 15 allegations (1.a. through 1.o.) regarding financial difficulties, specifically concerning delinquent debts, under Adjudicative Guideline F. The debts total approximately \$25,000. All of the debts were established by Items 4 and 5. The allegations will be discussed below in the order they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a delinquent account in the amount of \$8,404. Applicant admitted this debt in his RSOR, (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$5,782. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,475. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$431. Applicant admitted this debt in his RSOR, (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$386. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$234. Applicant admitted this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$229. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$209. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$174. Applicant admitted this debt in his RSOR. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a delinquent account in the amount of \$63. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.k. This overdue debt is cited in the SOR for a delinquent account in the amount of \$767. Applicant denied this debt in his RSOR. He wrote that the two documents attached to the RSOR establish that this debt and 1.l., below were settled. (Item 1.) I do not find that the attached documents establish that this debt has been resolved or reduced.

1.l. This overdue debt is cited in the SOR for a delinquent account in the amount of \$479. Applicant denied this debt in his RSOR. (Item 1.) (See 1.k., above.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.m. This overdue debt is cited in the SOR for a delinquent account in the amount of \$180. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.n. This overdue debt is cited in the SOR for a delinquent account in the amount of \$804, with a total loan balance of \$4,024. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

1.o. This overdue debt is cited in the SOR for a delinquent account in the amount of \$3,093. Applicant denied this debt in his RSOR. (Item 1.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

Applicant provided a number of reasons for his delinquent debts on his RSOR, including his divorce, and confusion with some accounts. He also wrote that while working with a financial counselor, they came to the belief that Applicant may have been

the subject of credit fraud. He also added that he planned to work with the counselor to help resolve some of these debts. (Item 1.) No evidence was submitted to show that he had disputed any of the accounts as being part of identity theft, nor was any evidence submitted to show Applicant and his counselor had attempted to settle any of his delinquent debts.

In Post-FORM Item A, dated February 23, 2017, Applicant wrote that he is now working with a bankruptcy attorney “to help alleviate the past debts that I have acquired over the past few years.” He also wrote that he “hoped to complete the first step of the process in the coming weeks.” No independent evidence was furnished about his planned bankruptcy.

Guideline E, Personal Conduct

The SOR lists one allegations (2.a.) regarding Personal Conduct, under Adjudicative Guideline E.

2.a. The SOR alleges that Applicant deliberately falsified facts on an Electronic Questionnaires for Investigations Processing (e-QIP) that he executed on April 30, 2015. (Item 1.) He was asked questions about his finances, including: In the last seven years, had any of his bills been turned over to a collection agency; had any account been suspended, charged off or cancelled for failing to pay as agreed, had he been over 120 days delinquent on any debt; and, was he currently over 120 delinquent on any debt? Applicant answered “Yes,” and he listed his child support, but he deliberately failed to list the all of the delinquent debts, as set forth under paragraph 1, above. (Item 1.) In his RSOR, Applicant indicated that he was not aware of some of these delinquent debts as they may have been as a result of identity theft. As discussed above, no evidence was ever furnished of identity theft or Applicant’s disputing any debts because of identity theft.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information 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 access to classified information. 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 information.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 personnel 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Applicant has had many delinquent debts for several years. No independent evidence was introduced to establish that any of these debts have been resolved. The evidence is sufficient to raise disqualifying conditions (a) and (c) as potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (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;
- (g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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, 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;

(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;

(f) the affluence resulted from a legal source of income; and

(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.

As reviewed above, no evidence was introduced to establish that any of Applicant's debts have been resolved or reduced. Therefore, I do not find that any of the mitigating factors under AG ¶ 20 are applicable in this case, and I find against Applicant under Guideline F.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. An Applicant may not be aware of every delinquent debt he has, but Applicant failed to cite any of the 15 debts listed on the SOR under Guideline F, and he provided no reasonable explanation for his failure to furnish honest answers. I find that the evidence is sufficient to raise disqualifying condition (a), 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 eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 listed below, but did not find that any of them are applicable in this case.

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns under the whole-person concept.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant

Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant

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

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge