



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03184

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

March 9, 2018

Decision

ROSS, Wilford H., Administrative Judge:

On December 12, 2014, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On November 15, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant signed his Answer to the SOR (Answer) on December 8, 2016, and requested his case be decided on the written record in lieu of a hearing. (Item 2 at 62.)¹ On April 25, 2017, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the file on April 29, 2017.²

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional information. The case was assigned to me on October 1, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

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* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions³ 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 implemented 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. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

Findings of Fact

Applicant is 60 and married with two children. He has been employed by a defense contractor since October 2014 and seeks to obtain a security clearance in connection with his employment. He has been deployed overseas as a translator for

¹ Applicant also signed his Answer on November 24, 2016, and February 7, 2017. (Item 2 at 10, 4 respectively. All of Applicant's 62-page Answer was considered by me in writing this Decision.

² Department Counsel submitted seven Items in support of the SOR allegations. Item 7 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 9, 2016. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Item 7 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 1, which described the potential admissibility of Item 7. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

³ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

various defense contractors since 2003, with the exception of a period of unemployment from December 2011 to April 2012. (Item 3 at Sections 13A, 16, 17.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Applicant admitted allegations 1.a, 1.b, 1.c, 1.d, 1.e, 1.g, and 1.k in the SOR under this Paragraph. Those admissions are findings of fact. He did not admit or deny allegations 1.h, 1.j, and 1.p. I view his silence as denial of those allegations. He denied the remaining allegations. The total amount of money Applicant allegedly owes on all SOR-listed debts is approximately \$36,718. The existence and amount of the debts is supported by credit reports dated June 12, 2014; December 18, 2014; and July 14, 2016. (Items 6, 5, and 4.)

Applicant's 62 page Answer contains what appears to be "cut and paste" excerpts from email communications, and other documents, from the law firm he hired to help repair his credit. However, he did not provide any specific documentation from any of his creditors concerning his debts with them, any payment arrangements he or the law firm has made about these debts, or the current status of his debts.

In his Answer at pages 6 and 30 Applicant appears to copy a payment page from the law firm he retained connected to some accounts. He also states on page 7 of his Answer that he is paying \$100 a month towards the debts in SOR allegations 1.a, 1.c, 1.d, and 1.e, which are all owed to the same creditor. However, the partial account numbers in the Answer do not match any of the accounts in the SOR or on record credit reports. In addition, he did not provide legible supporting documentation that would demonstrate any such payment arrangement.

In his Answer Applicant states that his debt situation was partially caused by his wife's nerve-damage surgery in around 2009, the fact that he moved several times in and out of the country and creditors documentation did not find him, credit accounts that were opened in his name but without his knowledge, the fact that other family members used his credit without his knowledge, and his reduced income due to underemployment and unemployment between 2011 and 2014. (See Item 7 at 4-5.)

The status of the debts, based on record evidence including Applicant's admissions and explanations, is as follows:

1.a. Applicant admitted owing a creditor \$7,876 for a charged-off credit card account. Applicant stated that this debt was being paid pursuant to a settlement agreement. No further information was provided. This debt is not resolved.

1.b. Applicant admitted owing a medical creditor \$5,520 for a past-due account. Applicant stated that this debt was being paid pursuant to a settlement agreement. No further information was provided. This debt is not resolved.

1.c. Applicant admitted owing a creditor \$4,506 for a charged-off credit card account. Applicant stated that this debt was being paid pursuant to a settlement agreement. No further information was provided. This debt is not resolved.

1.d. Applicant admitted owing a creditor \$4,124 for a charged-off credit card account. Applicant stated that this debt was being paid pursuant to a settlement agreement. No further information was provided. This debt is not resolved.

1.e. Applicant admitted owing a creditor \$2,360 for a charged-off credit card account. Applicant stated that this debt was being paid pursuant to a settlement agreement. No further information was provided. This debt is not resolved.

1.f. Applicant denied owing a creditor \$1,726 for a past-due account, stating the account was not his. Item 4, a credit report dated July 14, 2016, states, “[Consumer] disputes – Reinvestigation in progress.” No further information was provided. I find that Applicant has made a good-faith effort to resolve this debt. This allegation is found for Applicant.

1.g. Applicant denied owing a creditor \$1,512 for a past-due account, stating the account was not his. Item 4 states, “Consumer disputes this account information.” No further information was provided. I find that Applicant has made a good-faith effort to resolve this debt. This allegation is found for Applicant.

1.h. Applicant did not answer the allegation stating that he owed a medical creditor \$1,281 for a past-due account. Item 4 states, “[Consumer] disputes – Reinvestigation in progress.” No further information was provided. I find that Applicant has made a good faith-effort to resolve this debt. This allegation is found for Applicant.

1.i. Applicant denied owing a creditor \$1,197 for a past-due account, stating the account was not his. Item 4 states, “Consumer disputes this account information.” No further information was provided. I find that Applicant has made a good-faith effort to resolve this debt. This allegation is found for Applicant.

1.j. Applicant did not answer the allegation stating that he owed a creditor \$868 for a charged-off credit card account. Item 4 states, “Consumer disputes this account information.” No further information was provided. I find that Applicant has made a good-faith effort to resolve this debt. This allegation is found for Applicant.

1.k. Applicant admitted owing a creditor \$777 for a charged-off account. Applicant stated that this debt was being paid pursuant to a settlement agreement. No further information was provided. This debt is not resolved.

1.l. Applicant denied owing a creditor \$645 for a past-due account, stating that the account was not his. Item 4 shows this account as delinquent, and does not show that it is under dispute. No other information was provided. This debt is not resolved.

1.m. Applicant denied owing a creditor \$475 for a charged-off account, stating that the account was not his. Item 4 shows this account as delinquent, and does not show it as under dispute. No further information was provided. This debt is not resolved.

1.n. Applicant denied owing a creditor \$315 for a past-due account. Item 4 states, "Consumer disputes this account information, [Consumer] disputes – Reinvestigation in progress." No further information was provided. I find that Applicant has made a good-faith effort to resolve this debt. This allegation is found for Applicant.

1.o. Applicant denied owing a creditor \$136 for a past-due account, stating that it was not his. Item 4 shows that this is a delinquent government debt, and does not show it as under dispute. No further information was provided. This debt is not resolved.

1.p. Applicant did not answer this allegation that he owed a creditor \$129 for a charged-off account. Item 4 shows that this is a delinquent debt, and does not show it as under dispute. No further information was provided. This debt is not resolved.

1.q. Applicant denied owing a creditor \$1,319 for a charged-off debt, stating that the account was not his. Items 4 and 5 indicate that this account was purchased by another lender. There is insufficient evidence to find that Applicant has a currently owing debt to this particular creditor. This allegation is found for Applicant.

1.r. Applicant denied owing a creditor \$1,172 for a past-due debt, stating the account was not his. Item 5 shows the debt as due and owing as of December 18, 2014. No further information was provided. This debt is not resolved.

1.s. Applicant denied owing a creditor \$780 for a past-due debt, stating the account was not his. Item 6 shows the debt as due and owing as of December 12, 2014. No further information was provided. This debt is not resolved.

Applicant elected not to respond to the FORM, even though Department Counsel repeatedly emphasized in the FORM that he should provide legible copies of original documentation to support the statements in his Answer. He submitted no documented financial information, such as a budget, from which to make a conclusion that he is now financially stable.

Applicant also did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 useful 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, the administrative judge applies 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(c), 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of 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.

According to 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 seeks access to classified information enters 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.

Finally, as emphasized in Section 7 of EO 10865, "Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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 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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant, based on documentary evidence, had twelve delinquent accounts totaling \$28,480 that he could not or chose not to resolve. As stated, allegations 1.f, 1.g, 1.h, 1.i, 1.j, 1.n, and 1.q were found for Applicant. The evidence is sufficient to raise these potentially disqualifying conditions, shifting burden to Applicant to demonstrate mitigation.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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's debt problems have been in existence for many years. In addition, he provided no information to show that his current financial situation is stable. AG ¶ 20(a) does not apply.

Applicant states that his debt situations were caused by several issues, including his wife's illness, a substantial period of underemployment and unemployment between 2011 and 2014, and possible identity theft. He has been working with a credit repair law firm for some time, but his decision not to submit substantiating documents makes it impossible to know with specificity what he has done in the long-term. Applicant states that he has made a settlement agreement, but the excerpts provided in his Answer are not sufficient to support that statement. AG ¶ 20(b) is minimally applicable.

As stated, it appears that Applicant is working with a law firm to resolve debts and correct his credit. He also states that the law firm has arranged a payment arrangement between him and several of his creditors. Once again, the lack of pertinent documents, and the somewhat haphazard arrangement of his Answer, make it impossible to find that such an agreement has been made, or that he is abiding by it. AG ¶¶ 20(c) and (d) also have minimum applicability.

As stated, Applicant has disputed several of the debts, which is confirmed by the Government's most recent credit report. AG ¶ 20(e) applies to those debts only.

It is Applicant's burden to show with sufficient evidence that he has mitigated the security concerns of his financial situation. He has not done so, for the reasons set forth in this decision. Paragraph 1 is found against Applicant.

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 national security 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. Applicant's financial irresponsibility was recent, voluntary, and occurred when he was a mature adult. Rehabilitation was not demonstrated, nor was unlikelihood of recurrence. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not 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
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:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant

Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant

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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge