



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03215

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2017

Decision

Curry, Marc E., Administrative Judge:

Applicant's financial problems were caused by circumstances beyond his control, and he is working with a credit collection agency to rehabilitate his finances. Clearance is granted.

Statement of the Case

On January 19, 2017, 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 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 February 18, 2017, Applicant answered the SOR, denying the allegations, and requested a decision based on the written record instead of a hearing. On March 21, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 27, 2017, and filed a response on April 25, 2017. 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.¹

Evidentiary Ruling

Item 5 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on December 16, 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 58-year-old high school graduate with two adult children. He has been divorced since 2009. He is a Navy veteran, serving from 1979 to 1986, when he received an honorable discharge. He has been working for various federal contractors since leaving the military in 1986, and has maintained a security clearance since 1981. (Item 4 at 29) He has been working for his current employer as a technician since 2015.

The SOR alleges five debts, totaling approximately \$60,000. Applicant's finances first became strained when he and his wife divorced in 2009 and he assumed many of her debts. (Response at 1) His financial problems were exacerbated when he relocated after losing his job in 2012, and was subsequently unemployed for 14 months from May 2013 to September 2014. (Item 4 at 12)

Applicant retained a credit counseling agency to contest all of the alleged SOR delinquencies. With the help of the attorney for the collection agency, Applicant initiated an investigation of the disputed debts, and contacted the creditors. (Item 3 at 4) In March 2016, the creditor for three of the alleged delinquent accounts (subparagraphs 1.b, 1.d, and 1.e) contacted Applicant and informed him that, under an agreement reached with the U.S. Consumer Financial Protection Bureau, it was no longer going to continue pursuing any delinquent debt claims against Applicant. (Response at 4)

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

Applicant's dispute of the remaining SOR debts (subparagraphs 1.a and 1.c) was unsuccessful. With the help of the credit counselor, Applicant developed a payment plan in April 2017 to satisfy them. Under the plan, Applicant pays \$814 to the credit counseling agency in \$407 payments deducted automatically from his bi-monthly pay. (Response at 15) The initial account balance was \$60,979, and included a debt that was not alleged in the SOR. The plan is projected to be satisfied in three and a half years. (Response at 16) Applicant's net pay is \$3,000 per month. (Response at 16) In addition, Applicant receives \$408 per month in service-connected disability benefits. (Response at 17)

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). 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.

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."

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 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 debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which it 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 financial problems were not caused by profligate spending. Instead, they were caused by a divorce in 2009, and exacerbated by a lengthy period of unemployment in 2012. Applicant contested all of the SOR debts, and retained a credit counseling agency to investigate them. While the investigation was pending, the creditor of the debts alleged in SOR subparagraphs 1.b, 1.d, and 1.e informed Applicant that it was no longer going to litigate any claim for the disputed debts. It is unknown from the record whether this decision

was prompted by the efforts of Applicant's credit counselor, or whether the creditor was pressured to drop the claim by the U.S. Consumer Financial Protection Bureau, in an effort to avoid a potential class action lawsuit. Nevertheless, Applicant has provided documentary proof that he is not responsible for three contested SOR debts. AG ¶ 20(e) applies.

Applicant confirmed through the credit counseling agency that he owes the creditors of the remaining SOR debts that he had originally contested. Consequently, in April 2017, he developed a payment plan to satisfy them. AG ¶¶ 20(b) and 20(c) apply.

Applicant's credit counselor just finished helping him draft a debt payment plan in April 2017, three months after the SOR's issuance. Consequently, Applicant had not yet developed a payment track record as of the close of the record evidence. Consequently, AG ¶20(d) is only partially applicable.

Whole-Person Concept

Applicant is a disabled veteran who fell on hard times after a divorce and a job loss. He has since recovered, and has been steadily employed for the past two years. He has actively worked to resolve his financial difficulties, retaining a credit agency to challenge their authenticity, and developing a payment plan for the satisfaction of the confirmed delinquent debts. Under these circumstances, I conclude that the mitigating surrounding circumstances, together with the efforts at rehabilitation, render the vulnerability to coercion minimal, and outweigh the negative security inference generated by the relatively recent amount of time that has elapsed since Applicant entered the payment plan. Applicant has mitigated the financial considerations security concern. In reaching this conclusion, I also considered the length of time that has held a clearance.

Formal Findings

Formal findings for 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:	FOR APPLICANT
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Subparagraphs 1.a – 1.e:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is 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 granted.

Marc E. Curry
Administrative Judge