



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



In the matter of:

ISCR Case No. 16-03393

Applicant for Security Clearance

**Appearances**

For Government: Andre M. Gregorian, Department Counsel

For Applicant: *Pro se*

March 29, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On August 12, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP-86). (Government Exhibit 2.) On January 30, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order 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 after September 1, 2006.

Applicant answered the SOR on March 16, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On April 26, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing five Items, were received by Applicant on May 4, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM dated July 11, 2017, and it was admitted into evidence without objection as Applicant's Exhibit A. DOHA assigned the case to me on October 1, 2017. Items 1 through 5 are admitted into evidence, and going forward are referenced as Government Exhibits 1 through 5.

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*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions 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 by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, 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.

### **Findings of Fact**

Applicant is 46 years old. He has no prior military service. He is married with three children. He has completed some college. He is employed with a defense contractor as a drafter. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR identified eleven debts, including unpaid taxes and tax liens totaling approximately \$71,699. There are also three judgments and five accounts that have been charged off or placed for collection, all totaling \$5,652. Applicant admits allegations 1.a., through 1.e., set forth in the SOR. He denies 1.f., through 1.m, and 2.a. and 2.b. (Government Exhibit 1.) Applicant has been working for his current employer since September 2015.

Credit Reports of the Applicant dated August 29, 2015, and August 24, 2016, indicate that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 4 and 5.)

Applicant stated that after he got married, his wife took care of filing the income tax returns. When he learned that they had not been filed, he hired a law firm to assist him resolving his tax debt. Letters from Applicant's attorneys January 13, 2016, and

March 13, 2017, indicate that they are currently working with the Applicant to help him resolve his tax liabilities with the IRS. The correspondence shows that the tax years being covered are from 2004 through 2014.

1.a. Applicant failed to timely file his Federal income tax returns for tax years 2005 through 2011, 2013, and 2014 as required. There is no documentary evidence to show that he has filed these tax returns.

1.b. Applicant failed to timely filed his state income tax returns for at least tax years 2005 to 2011, and 2013, and 2014 as required. There is no documentary evidence to show that he has filed these tax returns.

1.c. Applicant is indebted to Federal tax authorities for unpaid taxes, interest, and penalties for tax years 2005 to 2011 and 2013 in the approximate amount of \$40,474. Applicant states that he is currently working with a tax firm to work out a payment plan with the IRS. There is no documentary evidence to show that these taxes have been paid.

1.d. Applicant is indebted to Federal tax authorities for a tax lien entered against him in October 2012 in the approximate amount of \$9,531. Applicant states that he is currently working with a tax firm to work out a payment plan with the IRS. There is no documentary evidence to show that these taxes have been paid.

1.e. Applicant is indebted to Federal tax authorities for a tax lien entered against him in October 2012 in the approximate amount of \$21,694. Applicant states that he is currently working with a tax firm to work out a payment plan with the IRS. There is no documentary evidence to show that these taxes have been paid.

1.f. Applicant is indebted to a creditor on an account that was charged off in the approximate amount of \$2,598. Applicant denies the allegation. The debt still shows on his credit report.

1.g. Applicant is indebted to a creditor for a medical bill in the approximate amount of \$877. Applicant denies the allegation, and believes the debt is his wife's. The debt still shows on his credit report.

1.h. Applicant is indebted to a cellular telephone company for an account placed for collections in the approximate amount of \$487. Applicant denies the allegation. The debt still shows on his credit report.

1.i. Applicant is indebted to a creditor for a medical account in the approximate amount of \$181. Applicant denies the allegation, and believes the debt is his wife's. The debt still shows on his credit report.

1.j. Applicant is indebted to a creditor for a medical account in the approximate amount of \$18. Applicant denies the allegation, and believes the debt is his wife's. The debt still shows on his credit report.

1.k. A judgment was entered against the Applicant in June 2011 in the approximate amount of \$813. Applicant denies the allegation, and believes the debt is his wife's. The debt still shows on his credit report.

1.l. A judgment was entered against the Applicant in September 2014 in the approximate amount of \$443. Applicant denies the allegation, and believes the debt is his wife's. The debt still shows on his credit report.

1.m. A judgment was entered against the Applicant in September 2009 in the approximate amount of \$235. Applicant denies the allegation. The debt still shows on his credit report.

### **Guideline E – Personal Conduct**

The Government alleges that the Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness and ability to protect classified information. Applicant denies the allegations set forth under this guideline.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), dated August 12, 2015. Section 26 asked about his Financial Record, specifically, whether in the past 7 years, has he failed to file or pay Federal, state or other taxes when required by law or ordinance? Applicant responded, "NO," This was a false answer. Applicant failed to disclose his failure to file his Federal and state income tax returns discussed above. (Government Exhibit 2.)

The same questionnaire, also in response to Section 26, asked the Applicant, "In the past seven years, have you had a lien placed against his property for failing to pay taxes or other debts?" Applicant responded, "NO," This was a false answer. Applicant failed to list the lien that was entered against him for failing to pay his taxes. (Government Exhibit 2.)

Applicant explained that after he completed the security clearance application online, he learned that the website had been hacked, and that he needed to fill it out again. He further stated that in between filing out this application, his mother passed away. Applicant believes that his mother's death distracted him from answering the questions correctly. Applicant states that he was deeply depressed after losing his mother because they were close. He admits that he did not fill out the application as detailed and as thorough as he did the first one. (Applicant's Exhibit A.) His excuses are not mitigating.

Applicant failed to disclose in his August 2015 (e-QIP) that he failed to file taxes in the past seven years and that he had liens entered against him for failing to pay taxes in the past seven years. Applicant has not provided any written documentation showing that he has even now filed his tax returns or that he has made any payments toward his

delinquent taxes and other debts. There are no letters of recommendation from anyone attesting to his character, nor are there performance reviews demonstrating his competence level at work. Under the circumstances, I find that his falsifications were deliberate, careless, and meant to be concealed from the Government.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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." The applicant has the ultimate burden of persuasion to obtain 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 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 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 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. Four are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file his Federal and state income tax returns for at least nine years, and he is indebted to the Federal Government for over \$70,000. The prolonged nature of Applicant's delinquent tax filings, and his unacceptable excuse for failing to file his taxes, shows unreliability, untrustworthiness and poor judgment. He also continues to have a number of outstanding judgments, and is indebted for other consumer debt and medical services. Applicant's actions demonstrate both a history of and an inability or a unwillingness to satisfy his debt. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are potentially applicable under AG ¶ 20.

(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), 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; and

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

Applicant provided no information concerning his financial affairs that demonstrate appropriate mitigation. There is insufficient information in the record to substantiate that his tax matters and other debts have been resolved. There is nothing in the record to show that he has filed his Federal and state income tax returns or paid his back taxes. Thus, at this point, it can be assumed that all the debts remain owing. Given these circumstances, there is no evidence that he has acted reasonably and responsibly. His actions demonstrate unreliability, untrustworthiness, and poor judgment.

#### **Guideline E- Personal Conduct**

The security concern 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. One is potentially applicable 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.

Applicant deliberately falsified his security clearance application in response to the questions regarding his failure to file his back taxes and that he had liens entered against him for failing to pay taxes. He did not answer the question truthfully. There are no applicable conditions that could be mitigating under AG ¶ 17.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

### **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
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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge