



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



In the matter of:

ISCR Case No. 16-03459

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Department Counsel

For Applicant: *Pro se*

February 20, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 20, 2015, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 3.) On January 23, 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. (Item 1.) 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 February 16, 2017. He denied the sole allegation in the SOR allegations concerning his delinquent debt, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 9, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items,

was mailed to Applicant on May 10, 2017, and received by him on June 14, 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 failed to submit a response to the FORM. DOHA assigned the case to me on November 9, 2017. Items 1 through 6 are admitted into evidence and are hereinafter referred to as Government Exhibits 1 through 6.

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 29 years old and never married. He has one minor child. He has a high school diploma. He is employed by a defense contractor as a Welder/Instructor. 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.

Applicant admits all of the allegations in the SOR with the exception of SOR allegations 1.f., 1.h., and 1.i., which are delinquent debts totaling approximately \$1,800. In addition to having past due debts amounting to about \$10,000, Applicant failed to timely file his Federal and State income tax returns for tax years 2013 and 2014. He currently owes back taxes to the Federal Government and to the State.

Credit reports of the Applicant dated December 4, 2015; and November 22, 2016, reflect that the debt listed in the SOR remains owing. (Government Exhibits 5 and 6.)

Applicant explained that he began to have financial problems around 2011 when his daughter was born. He had to pay for routine expenses related to having the child. He also began to date his current cohabitant and he was helping to support her three children. About this time, Applicant's car engine blew up, and he had to purchase

another car. Applicant was the sole income provider for the household until his cohabitant began working full time at the end of 2014. Applicant stated that he incurred court judgments, garnishments, and other delinquent debts he has not been able to pay. Since July 2015, his cohabitant has been gainfully employed and helping him with the household expenses. Applicant stated that he has been paying his current financial obligations. There is no evidence in the record that he has resolved any of his debts.

1.a. Applicant failed to timely file his 2013 and 2014 Federal Income Tax returns as required by law. Applicant admitted the allegation, and failed to provide any evidence to show that he has now filed these Federal income tax returns.

1.b. Applicant failed to timely file his 2013 and 2014 State Income tax returns as required by law. Applicant admitted the allegation, and failed to provide any evidence to show that he has filed these State income tax returns.

1.c. Applicant owes delinquent Federal back taxes in the approximate amount of \$5,677 for tax year 2013. Applicant admitted the allegation, and has failed to provide any evidence to show that this Federal tax liability has been paid.

1.d. Applicant owes delinquent State back taxes in the approximate amount of \$739 for tax year 2013. Applicant admitted the debt, and has failed to provide any evidence to show that this State tax liability has been paid.

1.e. A judgment was entered against the Applicant in October 2014 in the approximate amount of \$2,100, which remains owing. Applicant admitted the debt, and has failed to provide any evidence to show that he has paid this debt.

1.f. A debt owed to a creditor was charged off in the approximate amount of \$1,244, which remains owing. Applicant denied the debt, but failed to provide any evidence to show that the debt has been resolved.

1.g. A debt owed to a creditor was placed for collection in the approximate amount of \$1,126, which remains owing. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been paid.

1.h. A debt owed to a creditor was charged off in the approximate amount of \$78 which remains owing. Applicant denied the debt, but failed to provide any evidence to show that the debt has been resolved.

1.i. A debt owed to a creditor was placed for collection in the approximate amount of \$468 which remains owing. Applicant denied the debt, but failed to provide any evidence to show that the debt has been resolved.

1.j. A debt owed to a creditor was placed for collection the approximate amount of \$397, which remains owing. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been paid.

1.k. A debt owed to a creditor was placed for collection in the approximate amount of \$358, which remains owing. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been paid.

1.l. A debt owed to a creditor was placed for collection in the approximate amount of \$189, which remains owing. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been paid.

1.m. A debt owed to a creditor was placed for collection the approximate amount of \$166, which remains owing. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been paid.

1.n. A debt owed to a creditor was placed for collection in the approximate amount of \$100, which remains owing. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been paid.

1.o. A debt owed to a creditor was placed for collection in the approximate amount of \$82, which remains owing. Applicant admitted the debt and failed to provide any evidence to show that it has been paid.

1.p. Applicant's wages were garnished in about May 2012 in the amount of approximately \$1,335 for a debt owed to a creditor. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been resolved.

1.q. Applicant's wages were garnished in about October 2014 in the amount of approximately \$1,576.94 for a debt owed to a creditor. Applicant admitted the debt, and failed to provide any evidence to show that the debt has been resolved.

1.r. Applicant's wages were garnished in about March 2015 in the amount of approximately \$791.35 for a debt owed to a creditor. Applicant failed to answer this allegation. However, there is evidence in the record to show that a wage garnishment against Applicant began in March 2015 for repayment of State taxes.

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. 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 access to classified information 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; and
- (c) a history of not meeting financial obligations.
- (g) 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.

Applicant is delinquently indebted in the amount of approximately \$16,000. A judgment was entered against him, and his wages have been garnished. He also failed to timely file both his Federal and state income tax returns. He owes back taxes to both the Federal Government and the state. His actions demonstrate both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating condition under the Financial Considerations is potentially applicable under 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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances.

It appears that Applicant's financial problems began when his daughter was born and he was forced to accept more financial responsibility. It is not clear from the record whether Applicant has been working consistently on a full time, a part time basis. Consequently, there is no evidence that Applicant is solvent, or has the means to resolve his delinquent debt, including his back taxes at this time. He has provided no evidence to show that he has done anything to resolve his debts. Thus, there is no evidence that he has acted responsibly under the circumstances. His inaction casts doubt on his current reliability, trustworthiness, or good judgment.

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 security concern.

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
Subparagraphs 1.a.:	Against Applicant
Subparagraphs 1.b.:	Against Applicant
Subparagraphs 1.d.:	Against Applicant
Subparagraphs 1.d.:	Against Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	Against Applicant
Subparagraphs 1.h.:	Against Applicant
Subparagraphs 1.i.:	Against Applicant
Subparagraphs 1.j.:	Against Applicant
Subparagraphs 1.k.:	Against Applicant
Subparagraphs 1.l.:	Against Applicant
Subparagraphs 1.m.:	Against Applicant
Subparagraphs 1.n.:	Against Applicant
Subparagraphs 1.o.:	Against Applicant

Subparagraphs 1.p.:	Against Applicant
Subparagraphs 1.q.:	Against Applicant
Subparagraphs 1.r.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge