



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



In the matter of:

ISCR Case No. 16-03668

Applicant for Security Clearance

Appearances

For Government: Andrew H. Henderson, Department Counsel

For Applicant: *Pro se*

November 17, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On February 22, 2016; and August 17, 2007, Applicant submitted a security clearance application (SF-86). (Government Exhibits 2 and 3.) On January 6, 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 23, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On May 15, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing 7 Items, were received by Applicant on June 5, 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 respond to the FORM. DOHA assigned the case to me on October 1, 2017. Items 1 through 7 are admitted into evidence, and going forward are referenced as Government Exhibits 1 through 7.

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 63 years old. He is married and has three grown children. He has a Bachelor's degree. He is employed with a defense contractor as an Engineer. 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 one debt totaling approximately \$63,000. Applicant admits allegations 1.a., and 1.d., set forth in the SOR. He denies 1.b., and 1.c. (Government Exhibit 1.) Applicant has been working for his current employer since 2015.

Applicant accumulated over \$63,000 in debt that he did not list on his security clearance application dated February 22, 2016. (Government Exhibit 3.) There is no explanation as to how he became indebted.

Credit Reports of the Applicant dated November 7, 2007; March 4, 2016; and May 2, 2017, indicate that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 5, 6, and 7.)

1.a. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$63,004. There is no evidence to show that the debt has been paid.

1.b. Applicant is indebted to a creditor for a delinquent medical account in the approximate amount of \$731. There is no evidence to show that the debt has been paid.

1.c. Applicant is indebted to a creditor for a delinquent medial account that was placed for collection in the amount of \$110. There is no evidence to show that the debt has been paid.

1.d. Applicant filed for Chapter 13 Bankruptcy in 2001. The bankruptcy was dismissed in May 2002.

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 completed an Electronic Questionnaire for Investigations Processing (e-QIP), Standard Form 86 dated February 22, 2016. Section 26 asked about his Financial Record, specifically, whether in the past 7 years, has he had bills or debts turned over to a collection agency; or has he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? Applicant responded, “NO,” to both questions. These were false answers. Applicant failed to list the delinquent debts set forth above in subparagraphs 1.a., 1.b., and 1.c. (Government Exhibit 3.)

Applicant’s answer gives conflicting reasons why he did not answer the questions truthfully. He states that he did not read the question carefully before answering the question. (Applicant’s Answer to SOR.) He also states that when he completed the electronic security clearance application, the computer system did not retain the data he had saved. (Applicant’s Answer to SOR.) Which is it? Is it because he did not read the question carefully. This is probably more likely. If he incurred technical problems, he did not address the situation responsibly. He states that he had to input the data several times. He states that at some point, he became frustrated with the technical problems. He further states that he complained to someone about the problem he was having. (Applicant’s Answer to SOR.)

The record is void of mitigation here. Applicant has failed to provide any information concerning his current financial state. There are no letters of recommendation from anyone attesting to his character, nor are there performance reviews demonstrating the level or competence of his work product. Furthermore, there is nothing from his security department corroborating his testimony regarding technical problems he allegedly incurred while completing the security clearance application.

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. Three 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.

Applicant is delinquently indebted in the approximate amount of \$63,000. The record is void as to any mitigation. Applicant's actions demonstrate both a history of and 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 no information showing that he has done anything to resolve his debts or why he filed for Chapter 13 Bankruptcy in 2001, and why it was dismissed in 2002. 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 question regarding his finances. He did not answer the question truthfully. If he indeed had technical problems while answering the electronic security clearance questionnaire, he should have stopped and brought this to the attention of his security department. No matter what the obstacle, he should have taken the required time to answer the questions correctly. To knowingly submit erroneous answers on this important document is equally as irresponsible as intentionally submitting false answers. If Applicant had some problem completing the application correctly, he should have taken reasonable measures to document this problem at that time. Applicant did not

document anything about this technical problem. If he actually incurred technical difficulties, the fact that he did not mention the issue until he answered the SOR, shows poor judgment, unreliability and untrustworthiness. 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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	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