



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



In the matter of:

ISCR Case No. 16-03760

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

November 14, 2017

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant incurred more than \$35,000 in delinquent debt over the past eight years, which he discharged in Chapter 7 bankruptcy. Resulting security concerns were not mitigated. Based upon a review of the pleadings, testimony, and exhibits, national security eligibility is denied.

History of Case

On April 17, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 5, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging 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; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on January 24, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 20, 2017. DOHA issued a Notice of Hearing on May 4, 2017, setting the hearing for July 27, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified and offered Exhibits (AE) A through D into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 7, 2017.

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*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations 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 promulgated 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. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant is 47 years old. He is divorced. He is employed as an electrical technician, and is applying to renew his security clearance in connection with that work. He has worked for his employer for 13 years. (GE 1; Tr. 24-25, 36.) He admitted the delinquent debts alleged in SOR ¶¶ 1.a through 1.p. (Answer.) Applicant's admissions are incorporated in the findings below.

Applicant attributed his \$35,000 in delinquent debts to "overusing" credit cards and co-signing vehicle loans for family members. (Tr. 23.) He purchased clothing, electronics and a computer with the credit cards. (Tr. 37.) He also disclosed that he gambled at a casino twice a month and estimated he spent \$800 to \$1,000 per month on those trips. (Tr. 32, 38-39.) He testified his take-home pay was \$2,800 per month. (Tr. 39.) He intended to work out payment arrangements with his creditors, but never did so. (Tr. 35.)

Applicant filed Chapter 7 bankruptcy on January 23, 2017. He elected to file bankruptcy because he wanted his security clearance to be renewed. (Tr. 47.) He completed the financial counseling required to file bankruptcy. (AE B; AE C; AE D; Tr. 51.) His debts were discharged on April 25, 2017. (AE A.)

SOR ¶ 1.a alleged Applicant was indebted on a charged-off account in the amount of \$9,914. This debt was reported delinquent in 2011. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 4; GE 6.)

SOR ¶ 1.b alleged Applicant was indebted on a charged-off account in the amount of \$6,738. This debt was reported delinquent in 2011. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.c alleged Applicant was indebted on a charged-off account in the amount of \$4,095. This debt was reported delinquent in 2011. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.d alleged Applicant was indebted on a charged-off account in the amount of \$2,396. This debt was reported delinquent in 2013. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 4; GE 5; GE 6.)

SOR ¶ 1.e alleged Applicant was indebted on a charged-off account in the amount of \$1,621. This debt was reported delinquent in 2013. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 4; GE 5; GE 6.)

SOR ¶ 1.f alleged Applicant was indebted on a collection account in the amount of \$636. This debt was reported delinquent in 2012. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 4; GE 6.)

SOR ¶ 1.g alleged Applicant was indebted on a charged-off account in the amount of \$636. This debt was reported delinquent in 2015. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 4; GE 5; GE 6.)

SOR ¶ 1.h alleged Applicant was indebted on a collection account in the amount of \$512. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 4; GE 6.)

SOR ¶ 1.i alleged Applicant was indebted on a collection account in the amount of \$2,206. This debt was reported delinquent in 2013. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.j alleged Applicant was indebted on a charged-off account in the amount of \$1,268. This debt was charged-off in 2009. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.k alleged Applicant was indebted on a collection account in the amount of \$942. This debt was reported delinquent in 2010. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.l alleged Applicant was indebted on a collection account in the amount of \$646. This debt was reported delinquent in 2010. This debt is included in Applicant's January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.m alleged Applicant was indebted on a collection account in the amount of \$127. This debt was reported delinquent in 2009. Applicant's May 6, 2015 credit

report reflects Applicant was “making payments” on this collection account. Applicant was resolving this debt. This debt is also included in Applicant’s January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.n alleged Applicant was indebted on a collection account in the amount of \$1,587. This debt was reported delinquent in 2015. This debt is included in Applicant’s January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.o alleged Applicant was indebted on a collection account in the amount of \$1,297. This debt was reported delinquent in 2015. This debt is included in Applicant’s January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

SOR ¶ 1.p alleged Applicant was indebted on a collection account in the amount of \$1,066. This debt was reported delinquent in 2015. This debt is included in Applicant’s January 2017 Chapter 7 bankruptcy petition. (GE 5; GE 6.)

Applicant has not incurred any additional debt in the past two years. (AE A.) He has reduced his gambling to \$500 per month. (Tr. 56.) He intends to rebuild his credit and save for his future. (Tr. 59.) However, his current monthly expenses exceed his income. (Tr. 64.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an “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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 conditions that could raise security concerns and may be disqualifying in this case:

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so;

(c) a history of not meeting financial obligations; and

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant accumulated approximately \$35,000 in delinquent consumer debt from 2009 to 2015. He took little action to resolve those debts while they were accruing. He spent beyond his means, while at the same time, spending approximately one third of his monthly take-home pay gambling. He has been unable or unwilling to repay these debts. These financial issues date back over eight years. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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 accepted responsibility for his delinquent debts and attributed them to his overspending. While he resolved his SOR-alleged debts through his Chapter 7 bankruptcy, he failed to establish that he has changed his financial practices. He

Whole-Person Concept

(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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for his choices to incur substantial debt and not repay it. He continues to gamble, despite his financial troubles. There is insufficient evidence of rehabilitation and the potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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:

Subparagraphs 1.a through 1.p: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge