



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



In the matter of:)
)
) ISCR Case: 16-03994
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Department Counsel
For Applicant: *Pro se*

February 20, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 3, 2016; and June 20, 2011, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIPS.) (Government Exhibits 5 and 6.) On January 10, 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. 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 1, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On May 2, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 15 Items, were

received by Applicant on June 16, 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 in an undated submission and had no objections to the Government's evidence. DOHA assigned the case to me on October 1, 2017. Items 1 through 15 are admitted into evidence, and going forward are referenced as Government Exhibits 1 through 15.

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 38 years old and married. He complete some college and received a certificate. Applicant holds the position as a CAT II Linguist with a defense contractor. Applicant joined the active Army Reserves in April 2014 and he continues to serve. A security clearance is necessary in connection with his employment.

Guideline F – Financial Considerations

The Government alleges 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 alleges eighteen delinquent debts of the Applicant totaling in excess of \$10,000. Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated October 1, 2011; March 7, 2014; January 4, 2016; January 14, 2016; and January 6, 2017, reflect that each of the debts set forth in the SOR remain owing. He has been employed with his current employer since December 2015.

Applicant explained that between 2001 and October 2015 he regularly sent his parents in Mauritania \$300 every two to three months, to provide for their financial support. He also had more expenses than he could afford partially due to a faulty car that he purchased in 2006. He further stated that he trusted a friend to pay his bills while he was out of the country, and the friend failed to pay his debts. Over the years,

Applicant has claimed a number of times that he was making efforts to address his financial difficulties, but nothing much, if anything, was ever accomplished. In 2011, Applicant stated that he intended to look into debt consolidation options. In 2014, he claimed that he intended to pay all of his debts off. In 2015, Applicant stated that he was working with creditors scheduling payments arrangements to address his outstanding debts. In January 2016, he stated that he planned to contact his creditors identified in the SOR to make payment arrangements. In his response to the SOR dated March 2017, Applicant claims to be working with a debt consolidation company to address his debts. Some of the debts listed in the SOR have been included in the Applicant's debt consolidation plan, others were not. The following delinquent debts listed in the SOR remain owing:

1.a. A judgment was entered by a creditor against the Applicant in the amount of \$584. Applicant had agreed to pay \$25 a month until the debt was paid. He does not provide any evidence of payments, and the debt does not appear to be included in his debt consolidation plan.

1.b. A delinquent internet cable service account was placed for collection in the approximate amount of \$241. The debt does not appear to be included in his debt consolidation plan.

1.c. A delinquent medical account was placed for collection in the approximate amount of \$104. The debt does not appear to be included in his debt consolidation plan.

1.d. A delinquent T-Mobile account was placed for collection in the approximate amount of \$1,478. The debt is listed in the debt consolidation plan.

1.e. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$404. The debt is not included in his debt consolidation plan.

1.f. A delinquent debt owed to a telephone company for an account was placed for collection in the approximate amount of \$149. The debt is listed in the debt consolidation plan.

1.g. A delinquent debt owed to a bank for an account that was 120 past due or more, in the approximate amount of \$148, with a total balance of \$490 remains unpaid. The debt is listed in his debt consolidation program.

1.h. A delinquent military credit card debt for an account that was charged off in the approximate amount of \$2,538 remains unpaid. The debt does not appear to be included in his debt consolidation plan.

1.i. A delinquent department store debt for an account that was 120 days past due or more past due in the approximate amount of \$503 remains unpaid. The debt is listed in the debt consolidation plan.

1.j. A delinquent debt owed to a bank for an account that was placed for collection in the approximate amount of \$442 remains owing. The debt does not appear to be included in the debt consolidation plan.

1.k. A delinquent credit card account was charged off in the approximate amount of \$647. The debt does not appear to be included in the debt consolidation plan.

1.l. A delinquent credit card account was charged off in the approximate amount of \$222. The debt does not appear to be included in his debt consolidation plan.

1.m. A delinquent credit card account was charged off in the approximate amount of \$209. The debt does not appear to be included in the debt consolidation plan.

1.n. A delinquent debt owed to a creditor for an account that was charged off in the approximate amount of \$709 remains owing. The debt does not appear to be included in the debt consolidation plan.

1.o. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$224. The debt is included in the debt consolidation plan.

1.p. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$230 remains owing. The debt does not appear to be included in his debt consolidation plan.

1.q. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$1,486 remains unpaid. The debt is included in the debt consolidation plan.

1.r. A delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$322 remains unpaid. The debt does not appear to be included in his debt consolidation plan.

Applicant states that he is trustworthy reflected by his job responsibilities and duties to the United States.

Policies

When evaluating an applicant's suitability for 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. Under Directive ¶ E3.1.15, 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 *a/so* EO 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 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial delinquencies dating back to at least 2005. He incurred eighteen delinquent debts that he has not paid. Under the particular circumstances here, Applicant has not acted reasonably or shown good judgment in resolving his debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes no conditions in AG ¶ 20 that could possibly mitigate the security concerns arising from Applicant's alleged financial difficulties. However, even assuming:

- (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.

Under the particular circumstances here, AG ¶ 20(b) does not apply. Applicant has been telling the Government since 2005, for at least twelve years, that he was working to resolve his indebtedness. Over the years, he obviously did little to nothing towards his delinquent debts. In response to the FORM dated June 2017, Applicant submitted a letter and a Statement of Payment and Records, showing that he has finally hired a debt resolution company to assist him in resolving his indebtedness. It also shows that many of the creditors listed in the SOR are included in the repayment plan. However, it also shows that Applicant recently started the program, as the debt amounts still remain close to what was originally owed. At this point, Applicant has not submitted any compelling evidence that he has established a meaningful track record of repayment, or that he had a basis to dispute the legitimacy of any of his delinquent debts. Applicant must continue to pay his debts according to the plan and resolve his indebtedness. The record establishes no mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) through 20(g).

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has a serious problem of procrastination in paying his delinquent debts, or a real problem overspending. In either case, by not paying his debts in a timely fashion, he has shown that he is financially irresponsible. Overall the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not met his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

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:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a through 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 Applicant national security eligibility and a security clearance. National security eligibility is denied.

Darlene Lokey Anderson
Administrative Judge