



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



In the matter of:

ISCR Case No. 17-00229

Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Esq., Department Counsel

For Applicant: *Pro se*

February 20, 2018

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On February 13, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 2.) On March 1, 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. (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on April 28, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On May 12, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 6 Items, was mailed to Applicant on May 12, 2017, and received by him on May 22, 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. Applicant did not object to Items 1 through 6, and they were admitted into evidence.

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 59 years old. He is married and has one adult child and one adult stepchild. He is employed by a defense contractor. He is seeking to retain 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 six delinquent debts totaling approximately \$24,000. Applicant denies allegations 1.a., 1.d., and 1.e. He admits allegations 1.b., and 1.f., and partially admits and partially denies allegation 1.c. The debts include a judgment for child support in the amount of approximately \$14,000; delinquent rent in the amount of approximately \$7,000; and a delinquent consumer debt totaling approximately \$2,300.

Applicant states that his financial problems arose after the September 11, 2000, attacks when he and his wife were laid off from their jobs. Employment opportunities in the location then became non-existent, due to aircraft manufacturers drastic downsizing. It appears that Applicant has continued to have employment difficulties and has accumulated delinquent debt that he has not paid. Credit reports of Applicant, dated February 28, 2015; December 6, 2016; and January 6, 2017, confirm the indebtedness listed in the SOR. (Applicant's Exhibits 4, 5, and 6.) Applicant has accepted an offer to work for a defense contractor and needs access to classified information.

The following debts became owing and remain outstanding:

1.a. A delinquent debt was placed for collection in the approximate amount of \$969. Applicant states that the debt was removed from his record because another party took responsibility for the debt. Applicant has provided no documentary evidence to support his averment. The account remains owing. (Government Exhibits 4, 5, and 6.)

1.b. A delinquent debt was placed for collection in the approximate amount of \$727. Applicant admits the debt and claims that he will take care of it within then the next month or two, when he and his wife are able to move out of the motel that they are living in. The account remains owing. (Government Exhibits 4, 5, and 6.)

1.c. A judgment for child support was entered against the Applicant in 2010 in the approximate amount of \$14,247. Applicant contends that the judgment can no longer be collected upon due to its age. The judgment remains owing. (Government Exhibits 4, 5, and 6.)

1.d. A delinquent debt was placed for collection the approximate amount of \$403. Applicant states that he has no knowledge of the debt. The account remains owing. (Government Exhibits 4, 5, and 6.)

1.e. A delinquent debt was placed for collection in the approximate amount of \$357. Applicant states that the account was closed by the creditor. He has provided no documentary evidence to support his averment. The account remains owing. (Government Exhibits 4, 5, and 6.)

1.f. A delinquent account for rent in the amount of approximately \$7,200 remains owing. Applicant states that he and his wife plan to resolve the debt once they start working full time. The debt remains owing. (Government Exhibits 4, 5, and 6.)

There is no documentation in the record to show that Applicant has made any financial arrangements to pay any of his delinquent debt. He simply denies the debts based on lack of knowledge or because they were charged off. Each of the debts listed in the SOR are reflected in Applicant's credit reports and continue to remain delinquent and owing. (Government Exhibits 4, 5, and 6.)

Guideline E – Personal Conduct

Applicant completed an Electronic Questionnaire for Investigations Processing (e-OIP) dated February 13, 2015. (Government Exhibit 2.) In response to Section 26 concerning his financial record, Applicant was asked if "in the past seven years, has he been delinquent on alimony or child support payments?" He was also asked, "in the past seven years if he had a judgment entered against him?" The Applicant answered "NO" to both questions. These were false responses. Applicant failed to disclose the fact that he had been and currently is, delinquent with child support payments and that a

judgment was entered against him in 2010 for child support payments that he has not yet paid.

Applicant stated that he did not know how to answer the question about the judgment. A garnishment action was taken against him in 2008. After that, there has been no attempt to collect the debt by the creditor, thus Applicant does not believe that he was obligated to reveal it on his application or that the judgment will be pursued. Applicant was aware of the judgment against him for child support, and so he did not answer the questions on the application in 2015, truthfully. It seems that he has simply continued to ignore the judgment in hopes that it will fall off of his credit report.

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. According to AG ¶ 2(a), 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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 access to classified information. 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 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 relating to the guideline 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 to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant remains excessively indebted to the creditors listed in the SOR. He has failed to prove that he has done anything to resolve his delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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.

Applicant's logic concerning the judgment entered against him is flawed. Despite a debts age, the inquiry is not whether it was repaid, but whether Applicant acted reasonably and responsibly with respect to the debt. By ignoring it, he did not. In regard to his other creditors, he states that he is planning to resolve them debts when he is financially stable. At this point, however, it appears that he is unable or unwilling to pay these debts. In this case, Applicant cannot be said to have used good judgment or acted responsible, or acted in good-faith. He has provided no documentary evidence to substantiate his averments or to demonstrate that he has done anything to resolve his debt. He has also failed to establish any meaningful track record of repayment. Accordingly, it is found that of the debts listed in the SOR remain owing. Moreover, Applicant has not demonstrated that future financial problems are unlikely. In fact, there are no indications that his financial problems are being addressed in any fashion or are under control.

Guideline E, Personal Conduct

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

From the evidence provided, Applicant deliberately failed to disclose the judgment entered against him in 2010, claiming that because it was not being pursued by the creditor, and it was more than seven years old, it could not be collected. Applicant has provided no evidence to show that he does not owe the judgment. Applicant has not paid the debt and it remains owing on his credit reports. The fact that he did not list the debt in response to questions on his security clearance application

indicates behavior that shows questionable judgment, unreliability, and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, none of them were established in this case. Applicant intentionally and deliberately attempted to conceal material information from the Government regarding the judgment that was entered against him. Falsifying material information is a serious offense, and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. He has not provided sufficient evidence to meet his burden of proof with respect to his personal conduct.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Applicant has failed to provide any documentation to show proof of payment toward his delinquent debts. He also deliberately falsified his security clearance application concerning his finances. Applicant's credibility is in question. He has not been candid and up front with the Government about his financial affairs. He obviously does not understand the need to ensure that only individuals with whom the Government can trust can be provided access to classified information. Applicant has not demonstrated that he meets these qualifications.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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 ¶ E3.1.25 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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge