



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



In the matter of:

ISCR Case No. 17-00264

Applicant for Security Clearance

**Appearances**

For Government: Ray T. Blank, Jr., Department Counsel  
For Applicant: *Pro se*

November 10, 2017

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On May 1, 2015, Applicant submitted a security clearance application (SF-86). (Government Exhibit 4.) On March 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; 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 April 18, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On May 11, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing 13 Items, was received by Applicant on May 18, 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 13 are admitted into evidence, and going forward are referenced as Government Exhibits 1 through 13.

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. He has never been married and has one child. He has a high school diploma. He is employed with a defense contractor as a Security Officer. 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 13 allegations involving delinquent debts totaling approximately \$48,354, which include taxes, child support, a 2006 judgment, and other consumer debt. Applicant admits each of the allegations set forth in the SOR. (Government Exhibit 4.)

Applicant has no military service. He has been working for a number of defense contractors from about January 2000 to the present, and has previously held a security clearance. Between January 2010 and April 2010 he was unemployed. He claims that he is currently making payments to resolve each of the debts set forth in the SOR.

Credit Reports of the Applicant dated May 4, 2010; two dated February 3, 2012; May 20, 2015; May 9, 2017; and two dated May 10, 2017, indicate his indebtedness to each of the creditors listed in the SOR. (Government Exhibits 5, 6, 7, 8, 9 and 10.) There is no track record of debt resolution efforts or any regular payments made despite the age of the obligations. (Government Exhibit 4, pg. 36.)

1.a. Applicant's wages were garnished by a creditor in about March 2016, in the approximate amount of \$1,811. There is no evidence to show that the garnishment order has been completed. Applicant submitted documents to show that payments were made through garnishment, but it is not clear whether the debt was paid in full. As of December 2016, there remained a balance due of \$623.63. (Government Exhibit 2.)

1.b. In 2015, a lien was placed against his wages by a state for delinquent taxes in the approximate amount of \$9,325. There is no evidence to show that the 2015 tax lien has been satisfied or is being paid through a payment plan. Applicant provided documentation to show that he paid a 2012 tax lien in the amount of \$3,685.60 (Government Exhibit 2.)

1.c. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$122. There is no evidence to show that the debt has been satisfied.

1.d. Applicant is indebted to a creditor for an account placed for collection in the approximate amount of \$267. There is no evidence to show that the debt has been satisfied.

1.e. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$279. There is no evidence to show that the debt has been satisfied.

1.f. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$491. There is no evidence to show that the debt has been satisfied.

1.g. Applicant is indebted to the child support enforcement administration in the approximate amount of \$7,166. There is no evidence to show that the debt has been satisfied. Applicant submitted documentation of child support payments up to February 2016. His child support payments since then have not been addressed. His most current credit report reflects a remaining balance of \$6,427, with \$5,788 past due. (Government Exhibit 9.)

1.h. Applicant is indebted to a creditor for an account placed for collection in the approximate amount of \$13,265. There is no evidence to show that the debt has been satisfied.

1.i. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$270. There is no evidence to show that the debt has been satisfied.

1.j. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$437. There is no evidence to show that the debt has been satisfied.

1.k. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$4,471. There is no evidence to show that the debt has been satisfied.

1.l. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$5,149. There is no evidence to show that the debt has been satisfied.

1.m. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$5,301. There is no evidence to show that the debt has been satisfied.

Applicant has indicated an intent to resolve his delinquent debts but has failed to establish a track record showing that he has done so. He has provided no documentation corroborating any alleged settlement offers, settlement agreements, payments plans or payments for any of the remaining accounts alleged in the SOR.

#### **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 May 1, 2015. Section 26 asked about his Financial Record, specifically, whether in the past 7 years, he had been delinquent on alimony or child support payments. Applicant responded, “NO.” (Government Exhibit 4.) This was a false answer.

On the same questionnaire, Section 26 asked about Applicant’s Financial Record, specifically, whether in the past 7 years, he had defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or had his wages, benefits, or assets garnished; Applicant responded, “NO,” to all of these questions. These were false answers. Applicant failed to list the delinquent debts set forth in subparagraphs 1.a. through 1.m, above. (Government Exhibit 4.)

Applicant admits the allegations set forth under this guideline and provides no explanation for his falsifications. It can therefore be assumed that he deliberately attempted to conceal his financial history from the government on his security clearance application.

## 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 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 national security eligibility 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 indebted to thirteen separate creditors in an amount totaling approximately \$48,000. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under 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 provides insufficient information concerning his financial affairs that demonstrate appropriate mitigation. There is no evidence of any established payments agreements or his ability to follow an agreement to show a systematic method of payment. There is nothing done voluntarily to show that he has done anything to resolve his debts. He has made some payments toward one debt through garnishment, he had made some payments toward a state tax lien, but not the lien listed in the SOR, and he has made some child support payments. The remaining debt is still outstanding. 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 provided no explanation as to why he did not reveal his delinquent indebtedness on his security clearance application. He deliberately falsified his security clearance application in response to the questions regarding his finances. He did not answer the question truthfully about his finances, which 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 national security 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 |
| Subparagraph 1.e.:        | Against Applicant |
| Subparagraph 1.f.:        | Against Applicant |
| Subparagraph 1.g.:        | Against Applicant |
| Subparagraph 1.h.:        | Against Applicant |
| Subparagraph 1.i.:        | Against Applicant |
| Subparagraph 1.j.:        | Against Applicant |
| Subparagraph 1.k.:        | Against Applicant |
| Subparagraph 1.m.:        | Against Applicant |



Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 1.a.:

Against Applicant

Subparagraph 1.b.:

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.

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Darlene Lokey Anderson  
Administrative Judge