



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



In the matter of: )  
)  
) ISCR Case No. 17-00322  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Department Counsel  
For Applicant: *Pro se*

January 29, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On January 29, 2016, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On February 24, 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 4, 2017 and May 22, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 26, 2017, Department Counsel submitted the Government's

written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was received by Applicant on July 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 November 9, 2017. Items 1 through 5 are admitted into evidence, and hereinafter are referenced as Government Exhibits 1 through 5.

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 32 years old and married with three children. He has a high school diploma. He is employed by a defense contractor as an Assembler. 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 ten delinquent credit cards debts totaling approximately \$17,842. Applicant admitted each of the debts set forth under this guideline. (Government Exhibit 2.) Applicant's work history shows that he has been consistently employed since March 2010, despite his claims of unemployment in 2014 as noted below. He began working for his current employer in January 2016. Credit Reports of the Applicant dated February 13, 2016; and January 11, 2017, confirm each of the debts listed in the SOR. (Government Exhibits 4 and 5.)

Applicant attributes a period of unemployment, and having to help with the cost of funeral expenses for his late uncle that set him behind on his bills. Applicant claims that he incurred the debt during a period of steady employment, and then after 2014, lost his job, his uncle died, and the financial struggles began. Applicant was forced to

make a choice between providing for his family or paying his credit card debt. He chose to provide for his family.

He states that he is currently paying for rent, transportation, car insurance, utilities and food. He states that he has also started paying off some of his delinquent debt. In his Answer to the SOR, Applicant attached proof of several payments he made to a law office. It is not clear from the record whether this law firm is collecting for the creditors listed in the SOR. Furthermore, the record is void of any other documentation to show that any of the debts have been resolved.

### **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 e-QIP dated September 4, 2015. Section 26 asked about his Financial Record, specifically, whether in the past 7 years, he had bills or debts turned over to a collection agency? It also asks, whether in the past seven years he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?” Applicant responded, “NO,” to both questions. (Government Exhibit 1.) These were false answers. Applicant failed to list any of the delinquent debts set forth in the SOR.

Applicant stated that when he filled out the job application, which I assume included the security clearance application, he did not have a good understanding of the English language, and he misunderstood the questions. He stated that he was not aware that he was required to list his delinquent debts in response to those questions on the application. He also stated that some of his delinquent debts became delinquent after he completed the application. (See Applicant’s Answer to SOR and Government Exhibit 3.)

### **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's states that his financial problems began when he lost his job and his uncle passed away in 2014. It appears that Applicant has started to pay some of his delinquent debts. However, the record is not clear which debts, if any, listed in the SOR have been addressed. Applicant has not indicated that he has set up any payments plans or is following an agreement structured between him and the creditor. Without more, Applicant's actions demonstrate both a history of and inability or an 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 insufficient evidence showing that he has

done much to resolve his delinquent debt. Thus, it can be assumed that the delinquent debts listed in the SOR remain owing. Under 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 e-QIP in response to questions regarding his delinquent debts. Applicant stated that in 2014, after the death of his uncle, and when Applicant lost his job, he had to choose in providing for his family or making payments on his credit card debt. He choose to provide for his family, and his financial problems began. This clearly shows that he knew about the debts. He knew that the debts became delinquent and he deliberately failed to disclose them in response to questions on the e-QIP. Furthermore, I understand that he has a language barrier, but these questions, he clearly understood. If an individual cannot understand the questions on the application enough to answer them correctly, an individual certainly cannot qualify for access to classified information. 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.a.:	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
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