



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



In the matter of:

ADP Case No. 17-00485

Applicant for National Security Eligibility

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/10/2018

Decision

WHITE, David M., Administrative Judge:

Applicant incurred delinquencies on his second mortgage loan, two consumer debts, and Federal income taxes due to circumstances that were temporarily beyond his control. He took responsible action to improve those circumstances, is financially stable, and has resolved all formerly delinquent debts. Resulting security concerns were mitigated. Based upon evaluation of the testimony, pleadings and exhibits, national security eligibility is granted.

History of Case

On February 21, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 13, 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 March 31, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 22, 2017. DOHA issued a Notice of Hearing on July 11, 2017, setting the hearing for July 28, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) A through D into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until August 28, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on August 8, 2017. Applicant submitted no additional evidence, and the record closed as scheduled.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006.¹ 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 has been employed as an aircraft mechanic by a Federal contractor and its successor contractor since February 2016. He is applying for national security eligibility to perform sensitive duties in connection with that work. The SOR contained five allegations concerning Applicant's formerly delinquent debts. Applicant denied all of the allegations, with explanations of his efforts to resolve each of the issues. (GE 1; Answer.)

Applicant is 63 years old, has never married, and has no children. He enlisted in the Navy in 1974 after graduating from high school, and honorably retired in 1995 as an Aviation Machinist Mate First Class. He then attended a technical college, from which he graduated in July 1997. He successfully held a security clearance during his naval service, but this is his first post-retirement application for national security eligibility. (GE 1; GE 5; Tr. 11-13, 43.)

Applicant incurred intermittent periods of underemployment and unemployment over the past ten years. He attributed his former, temporary, financial problems to his reduced income during some of those periods when he had to rely more heavily on his

¹ This was designated an ADP case by the DoD CAF because Applicant's employer is sponsoring him to obtain national security eligibility to occupy a designated national security sensitive position, even though he does not work in data processing or with personal identifying, financial, or medical information. See Hearing Exhibit (HE) II.

Navy retirement pay of about \$1,500 per month. His current job pays about \$60,000 per year, and he has about \$2,000 per month in surplus income after meeting all living expenses and debt obligations. He underwent financial counseling with the law firm that helped him resolve his second-mortgage delinquency, and is making regular contributions into his retirement savings plan. He has no delinquent debts, and his financial situation is stable. (GE 1; AE C; Tr. 42-49.)

Applicant fell behind on payments toward his second mortgage loan during early 2013, due to a business downturn that reduced his hours and pay at the job in which he was then working. The credit bureau reports, upon which the SOR ¶ 1.a allegation was based, cited information reported to them on the status of this loan during March 2014 by the creditor then holding the loan. These 2014 entries showed a past-due amount of \$3,787 and a total outstanding balance of \$20,758. Applicant consulted and hired a consumer debt advocacy law firm to assist him in resolving this delinquency in 2015. He and the firm successfully negotiated a loan modification with the current creditor in September 2015. Applicant made the initial \$1,000 payment called for by the new terms on October 1, 2015, and began making the \$228 monthly modified loan payments on November 1, 2015. He has timely made all subsequent monthly payments toward this mortgage loan. (Answer; GE 4; AE A; AE C; Tr. 45, 47-52.)

The debts alleged in SOR ¶¶ 1.b and 1.c involved a \$3,160 utility bill and a \$400 credit card account that became delinquent around the same time and for the same reasons as Applicant's second mortgage loan discussed above. Applicant paid both of these debts in full during early 2017, after obtaining his current employment and stabilizing his financial situation. (Answer; GE 4; AE D; Tr. 52-55.)

SOR ¶ 1.d alleged an old charged-off \$12,452 debt to a major bank. The account reportedly had a past-due balance of \$2,792 and a last-activity date of August 2009, when it was last updated by Equifax in February 2016. Applicant contacted the bank about this entry and asked for verification of the debt since he had no recollection or idea concerning it having been his account. After taking his information and informing him that the debt could not be quickly identified, the bank representatives never contacted him again and the debt was removed from the two more recent Equifax credit reports in the record. On this basis I find that there is not substantial evidence establishing that this debt, which Applicant denied, was his obligation. I further find that, to the extent there is evidence supporting such an allegation, Applicant successfully disputed the debt. (Answer; GE 2; GE 3; GE 4; AE D; Tr. 64-76.)

Applicant reported on his e-QIP that he owed about \$6,000 in unpaid Federal income taxes since 2012, as alleged in SOR ¶ 1.e. He had experienced under-withholding during the 2010 and 2011 tax years, partially as a result of the higher tax rates on the combined incomes from his job and his military retirement. This also occurred around the time he was suffering the other budget issues discussed above, so he could not immediately pay the additional taxes due. He filed all of his tax returns on time, and has paid his taxes for all prior and subsequent years on time as well. In 2015, he entered into a repayment agreement with the IRS, and has timely made every \$200

monthly payment under it. At the time of his hearing, he had reduced the outstanding balance to \$2,316. (Answer; AE B; Tr. 55-64.)

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. Pursuant to 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 *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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations and
- (f) failure to file or fraudulently annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant encountered financial difficulties during the years before obtaining his current employment, primarily caused by intermittent periods of underemployment or unemployment. Between 2010 and 2013, he fell behind on his second mortgage loan, two consumer debts, and his Federal income tax payments for 2010 and 2011. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes six 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's relatively short period of financial troubles arose from employment circumstances that were temporarily beyond his control, but subsequently resolved by obtaining his current job. He obtained professional credit counseling, has reestablished financial solvency, and has fully repaid or complied with repayment agreements concerning all of his former mortgage, consumer, and tax delinquencies. He demonstrated both the means and the intention to successfully continue this pattern of financial responsibility. These actions establish mitigation of security concerns raised by his acknowledged formerly delinquent debts under AG ¶¶ 20(a), (b), (c), (d), and (g).

The evidence is insufficient to establish that the debt alleged in SOR ¶ 1.d belonged to Applicant. He denied that it was his, and contacted the bank that formerly reported it to request verification. The debt has since been removed from all of his credit reports, and repayment is not being sought, removing any potential for pressure, coercion or duress as a result. Any security concerns that may have arisen from this alleged debt were mitigated under AG ¶ 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 is a mature adult, who has demonstrated accountability for resolving the debts he was formerly unable to repay. He has now resolved his formerly delinquent debt through payment in full or compliance with ongoing, affordable repayment agreements. He demonstrated strong character and has devoted most of his adult life to successful support of national security objectives. Applicant provided persuasive evidence of rehabilitation and sufficient income stability to ensure solvency in the future. The potential for pressure, exploitation, or duress is minimal. Overall, the evidence has eliminated the formerly legitimate doubt as to Applicant's national security eligibility. He successfully 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 the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant national security eligibility. National security eligibility is granted.

DAVID M. WHITE
Administrative Judge