



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



In the matter of:)	
)	
)	ISCR Case: 17-00541
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Department Counsel
For Applicant: *Pro se*

November 17, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On February 6, 2015, Applicant submitted a security clearance application (SF-86). On March 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. 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 20, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 16, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 8 Items, were received by Applicant on June 12, 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 8 are admitted into evidence, and going forward are referenced as Government Exhibits 1 through 8.

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 45 years old. Applicant is divorced. He has a Bachelor's degree in Business Management. He is employed with a defense contractor as a Translator/Spanish Linguist. He is seeking to obtain a security clearance 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 nine delinquent debts Applicant accumulated consisting of a delinquent mortgage account and various consumer accounts totaling in excess of \$100,000. Applicant denies each of the allegations and claims that he was the victim of identity theft in 2011, conducted by a group of sophisticated individuals who used his identity in a highly elaborate and complex scheme to obtain multiple luxury vehicles, and goods and services that caused this financial problem. Applicant states that when he learned of the theft, he filed a police report, contacted the credit bureaus, blocked his credit files, placed a fraud alert on his files, and filed a consumer statement explaining his situation. Applicant contends that the three major credit reporting agencies are reporting inaccurate and erroneous information. (Applicant's Answer to SOR.)

In regard to the delinquent debts set forth in the SOR, discussed below, Applicant stated in June 2016, during his security clearance background investigation,

that due to the recession in 2008, he fell behind on these bills, and was unable to afford to pay them. During the interview, he recognized each debt, and indicated that he planned to pay them off when he is financially able to do so. (Government Exhibit 5.) The following delinquent debts set forth in the SOR remain outstanding:

1.a. The SOR alleges that Applicant remains indebted for an account that was placed for collection in the approximate amount of \$22,698. This account was opened in 2006. Applicant stated that he planned to pay off the debt. He states that he did not list this debt on his security clearance application due to an oversight. He stated that the debt was due to the recession of 2008, as he was unable to make the payments. (Government Exhibit 5.)

1.b. A delinquent credit card debt for an account that was placed for collection in the approximate amount of \$6,972, remains unpaid. Applicant was not sure when he opened the account, but he agreed with the information. He further stated that he was not able to make payments toward the debt as a result of the recession in 2008. Applicant did not list the debt on his security clearance application due to an oversight. (Government Exhibit 5.)

1.c. A delinquent credit card debt for an account that was placed for collection in the approximate amount of \$4,909, remains unpaid. The Applicant stated that he was not sure when he opened the account, but that he agreed with the information. He was unable to afford to make payments toward the debt as a result of the recession in 2008. He did not list the debt on his security clearance application due to an oversight. (Government Exhibit 5.)

1.d. A delinquent credit card debt for an account that was charged off in the approximate amount of \$4,329 remains unpaid. Applicant stated that the account was opened in 2006. He was unable to afford to make the payments, but he plans to pay it off when he is able to. He did not list the debt on his security clearance application due to an oversight. (Government Exhibit 5.)

1.e. A delinquent debt for an account that was charged off in the approximate amount of \$3,767 remains unpaid. Applicant stated that the account was opened in 2005. The debt was incurred because he could not afford to make the payments. He plans to pay off the balance once he is able to. He did not list the debt on his security clearance application due to an oversight. (Government Exhibit 5.)

1.f. A delinquent debt owed to a department store for an account that was placed for collection in the approximate amount of \$1,965 remains unpaid. Applicant states that this account was opened in 2008. Applicant stated that he could incurred the debt because he could not afford to make the payments. He plans to pay off the balance when he is able to. (Government Exhibit 5.)

1.g. A delinquent debt owed to a creditor for an account that was past due in the approximate amount of \$25,647, with a total balance of \$69,266 remains unpaid. Applicant claims that this debt was incurred due to the recession of 2008 and he was unable to afford to make the payments. He plans to pay off the account when he is able to do so. (Government Exhibit 5.)

1.h. A delinquent credit card debt for an account that was past due in the approximate amount of \$967 remains unpaid. Applicant states that he opened the account in 2006. He incurred the debt because he could not afford to make the payments. He plans to pay off the balance when he is able to. (Government Exhibit 5.)

1.i. A delinquent credit card debt for an account that was placed for collection in the approximate amount of \$7,490 remain unpaid. Applicant states that the account was opened in 2006. The debt was incurred because he was unable to afford to make the payments. Applicant plans to pay off the balance when he is able to do so. (Government Exhibit 5.)

Applicant blames the identity theft in 2011 for his current financial situation. However, his financial problems started long before 2011. Several of the delinquent accounts became delinquent in 2006. (Government Exhibit 7.) Over time, two of the accounts have been charged off. (Government Exhibit 8.) Several accounts remain in collection. (Government Exhibit 8.) Most importantly, each of the debts listed in the SOR were recognized, acknowledged, and addressed specifically by the Applicant in 2016, during his security clearance background interview with the investigator. (Government Exhibit 5.) At that time Applicant admitted each debt, knew when he opened the account, and told the government that he planned to pay it. Applicant claimed at that time that his financial stress has been caused by delays in processing his security clearance and his inability to start new employment. During this period, Applicant claims that he exhausted his savings.

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 *also* 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 distress. He opened a number of accounts in 2006 and by 2008 could not afford to make the payments. He now claims that he was a victim of identity theft in 2011 that caused his financial problems. Applicant's identity theft in 2011 had no impact on the delinquent debts he incurred "due to the recession in 2008," or his inability to afford to make the payments on those debts. Under the particular circumstances here, Applicant has not acted reasonably or shown good judgment in resolving his debts. He has provided no evidence to show that he has paid any of them. It appears that he is simply waiting for them to fall off of his credit report given the age of the obligation. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes one condition in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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. The identity theft that occurred in 2011 did not involve any of the delinquent debts listed in the SOR. Furthermore, Applicant has not initiated a good faith effort to repay his creditors or otherwise resolve his debts. He has not acted reasonably under the circumstances. In fact his recent credit reports continue to reflect multiple accounts in collection and charge off. He 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 these delinquent debts. 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 worked for as a Government contractor for the past seventeen years, and he has held a security clearance in the past. 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.i:	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