



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



In the matter of:

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) ISCR Case No. 17-00594
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Applicant for Security Clearance

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

January 26, 2018

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On April 11, 2013, Applicant submitted a security clearance application (e-QIP). 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. (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 12, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On June 23, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 7 Items, was mailed to Applicant on June 26, 2017, and received by him on July 6, 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 7, and they are 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 38 years old. He is employed with a defense contractor as an Installer. He is applying for a security clearance in connection with his employment. Applicant began working for his current employer in August 2012.

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 five delinquent debts totaling in excess of \$20,000 that consist of a past due mortgage account and delinquent consumer accounts. Applicant admits to each of the delinquent accounts listed in the SOR. Credit Reports of Applicant dated April 23, 2013; August 12, 2016; and June 23, 2017; confirm the indebtedness listed in the SOR. (Government Exhibits 5, 6, and 7.)

Applicant failed to explain why he has become excessively indebted. A security officer's report dated August 2, 2016, stated that Applicant missed payments on his credit card because his mortgage increases \$400 per month, effecting his ability to make the credit card payments. (Government Exhibit 3.) Despite his long term employment, Applicant has continued to have financial problems. Applicant's recent credit report shows that he paid, settled, or became current on several debts that were past due as of his August 2016 credit report. These creditors are not listed in the SOR. He has also settled two of his debts, listed in the SOR. His most recent credit report shows that his delinquent mortgage account had increased to \$40,000. He states that he is going through a loan modification concerning his mortgage accounts, but has failed to provide any documentation to substantiate such.

The following debts became owing and remain outstanding:

1(a) A delinquent mortgage account is past due in the approximate amount of \$17,982 with a total balance of \$221,112. This account remains outstanding.

1(b) A delinquent credit card account owed to CAP ONE was past due in the approximate amount of \$281 with a total balance of \$1,457. Applicant stated that he was currently on a payment plan that was to be paid off within six months. This debt has been settled this debt and it is no longer outstanding. (Answer to SOR.)

1(c) A delinquent credit card account owed to CAP ONE was past due in the approximate amount of \$183 with a total balance owed of \$1,089. Applicant stated that he was currently on a payment plan that was to be paid off within six months. This debt has been settled this debt, and it is no longer outstanding. (Answer to SOR.)

1(d) A delinquent department store account was charged off in the approximate amount of \$787. He stated that he was going to pay it off in two months. The account remains owing. (Answer to SOR.)

1(e) A delinquent medical account was placed for collection in the approximate amount of \$222. He stated that he needed to get more information regarding the debt. If it is determined that he owes it, he intends to pay it off within two months. The account remains owing. (Answer to SOR.)

The vast majority of Applicant's delinquent debt resides in his \$40,000 past due mortgage. There is no documentation in the record to show that he has done anything to resolve this debt. Applicant most recent credit report indicates that the two debts owed to a bank have been settled for less than what was owed. The remaining two smaller debts in the SOR still remain owing. It would have been helpful for Applicant to provide additional documentation relating to his loan modification or any debt repayments plan with his creditors, his current financial state of affairs, as well as any budgets in place to show that his finances are now in order. The record is void of this mitigation.

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 national security eligibility 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.

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, 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 is excessively indebted to the creditors listed in the SOR. He has settled two of his credit card debts for less than what was owed. There is no other evidence in the record to prove that he has done anything to resolve the other 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 has failed to explain why he became excessively indebted. If the increased mortgage account is the reason he cannot pay his debts, it was not beyond his control based upon the fact that he voluntarily entered into the mortgage agreement. Under the particular circumstances here, Applicant has failed to establish that he acted reasonably or responsibly with respect to his debts. Applicant has not resolved the majority of his delinquent debt nor has he demonstrated that future financial problems are unlikely. It has not been demonstrated that his current financial problems are under control.

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 in my whole-person analysis. Other than his mortgage adjustment, Applicant has provided no information to explain what if anything has negatively impacted his financial situation. Applicant has not demonstrated that he is financially responsible.

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 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:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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 for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge