



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



In the matter of:

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ISCR Case No. 17-00683

Applicant for Security Clearance

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

07/24/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern generated by his delinquent debts. Clearance is denied.

Statement of the Case

On April 3, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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* (AG) effective within the DOD on September 1, 2006.

On April 25, 2017, Applicant answered the SOR, admitting all of the allegations. He requested a hearing, whereupon the case was assigned to me on December 4, 2017. On March 13, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing,

scheduling Applicant's case for April 11, 2018. The hearing was held as scheduled. I received three Government exhibits (GE 1 – GE 3) and one Applicant exhibit (AE A). Also, I took administrative notice, at Department Counsel's request, of the discovery letter mailed to Applicant on May 25, 2017 (Hearing Exhibit I). At the close of the hearing, I left the record open, at Applicant's request, for him to submit additional exhibits. Department Counsel did not object. Within the time allotted, Applicant submitted 11 exhibits that I incorporated into the record as AE B through AE L. The transcript (Tr.) was received on April 11, 2018.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

Findings of Fact

Applicant is a 48-year-old married man with three children, ages 18, 13, and 9. He is a high school graduate and has earned some college credits. He has been working for a defense contractor since 2012. Currently, he is a senior logistics and program analyst.

Applicant is highly respected on the job. According to the chief executive officer of the company, his "performance has always met or exceeded expectations and he is deemed trustworthy, competent, diligent, and responsible by customers and colleagues." (Answer at 4) His client is fortunate to have him on the team. (AE K at 4)

Applicant is a veteran of the U.S. Navy, enlisting in 1995 and serving through his honorable discharge in the summer of 2010. Applicant intended to serve in the Navy until he was retirement eligible; however, after he struggled for years with weight control problems, the Navy opted not to renew his contract.

Applicant and his wife had not planned financially on an early exit from the Navy. (Answer at 1) Nevertheless, they began adjusting to civilian life, as Applicant gained a job in November 2010, approximately four months after his discharge. (GE 1 at 12) Applicant worked at his first post-Navy job for approximately 21 months before being laid off in August 2012. (Tr. 21) He was then unemployed for three months before obtaining his current job in December 2012.

Because Applicant's new job was located in another state, he had to relocate. He was unable to sell the home in the state from where he had moved because the mortgage balance exceeded the fair market value. (Tr. 17) Consequently, Applicant rented the home. Over the years, tenants paid rent erratically. Ultimately, this strained Applicant's finances, and he fell behind on the mortgage payments.

In July 2015, Applicant's troubles paying the mortgage were temporarily ameliorated after he successfully applied for a loan modification. (Tr. 27) Approximately a year later, Applicant discovered that the home had significant mold damage, requiring costly repairs. As of the date of the SOR, Applicant was approximately \$1,698 behind on his mortgage payment, as alleged in subparagraph 1.b. Currently, he is attempting to short sell the home. (Tr. 27) He has not made any mortgage payments since the fall of 2017.

Applicant is delinquent on his state income taxes for tax year 2014, as alleged in subparagraph 1.a, in the amount of \$2,700. This debt remains outstanding, and he has yet to contact the state revenue authority to develop a payment plan. (Tr. 25)

Applicant is indebted to a credit union in the amount of \$7,972, as alleged in subparagraph 1.c. In March 2018, He contacted the creditor to initiate a payment plan. It appears that he made a payment, per AE A, but the amount is inconclusive.

The debt alleged in subparagraph 1.d, totaling \$5,036, is a hardware store credit card. (Tr. 31) Applicant contacted the creditor approximately a year ago, but has not followed up since then. (Tr. 31)

The debt alleged in subparagraph 1.e, totaling \$1,212, is a loan for a dental bill. It remains unpaid. Applicant intends to begin paying it once he has satisfied the debt alleged in subparagraph 1.e.

The debt alleged in subparagraph 1.f, totaling \$1,679, is a medical account. Applicant contends that he paid it, but provided no substantiating documentation.

In the fall of 2017, Applicant's wife obtained a new job. (Tr. 19) The annual salary is approximately \$15,000 higher than that of her previous job. (Tr. 24) Moreover, her job has better insurance coverage than Applicant's job, enabling them to switch to her plan, saving \$1,200 per month. (Tr. 24) Per their updated budget, they now have \$3,523 of discretionary monthly income. (AE C)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial,

and commonsense decision. According to AG ¶ 2(c), 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).¹

¹ The factors under AG ¶ 2(a) are as follows:

(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 or 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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 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 risk of having to engage in illegal acts to generate funds.

Applicant's ongoing financial problems trigger the application of AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c) "a history of not meeting financial obligations," and AG ¶ 19(f), "...failure to pay annual Federal, state, or local income tax as required." The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 financial problems stemmed from two lengthy periods of unemployment within the first three years after his discharge from the Navy, and they were exacerbated after he relocated to another area to pursue a new job, but was unable to sell his home. AG ¶ 20(b) is partially applicable.

Applicant has prudently attempted to mitigate his losses from his property by renting it, modifying the loan, and attempting to short sell it. Its status remains unresolved. Similarly, the remaining SOR debts are either unresolved, or payments lack evidence of substantiation. Under these circumstances, none of the remaining mitigating conditions apply.

Whole-Person Concept

Applicant is a highly-valued employee. His financial problems did not originate from foolish or profligate spending. Regardless of how he incurred the debt, he has the burden of proof to establish that his debts are under control. Although his wife's higher-paying new job weighs in his favor when considering his ability to eliminate his delinquent indebtedness, he has provided minimal proof of any measurable progress. Under these circumstances, it is too soon to conclude that he will mitigate the 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
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Subparagraphs 1.a – 1.f:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge