



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



In the matter of:

ISCR Case No. 17-00688

Applicant for Security Clearance

Appearances

For Government: Tara R. Karoian, Department Counsel

For Applicant: *Pro se*

March 28, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 17, 2015, Applicant submitted Electronic Questionnaires for Investigation Processing (e-QIP). (Government Exhibit 3.) On April 26, 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 May 16, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 14, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing 7 Items, was received by Applicant on July 10, 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 responded to the FORM on August 16, 2017, and submitted Exhibits A through L which were admitted into evidence. DOHA assigned the case to me on November 9, 2017. Applicant had no objection to Government's items. Therefore, Items 1 through 7 are admitted into evidence, and hereinafter referenced as Government Exhibits 1 through 7.

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. He is employed by a defense contractor as a Manager. 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.

Applicant has worked for his current employer since March 2004. He has held his current security clearance off and on since about 2000.

The SOR identified fourteen allegations under this guideline consisting of Applicant's consumer delinquent debt totaling approximately \$24,236, and his back tax debt to the Federal Government and state in the amount of approximately \$52,000. In his answer to the SOR, Applicant admits to all of the allegations, and provides some explanations.

Evidence in the record shows that over the years, Applicant has lived beyond his means, always putting his family's needs and wants first, and always being supportive of his children's dreams. Among these things, sending his son to private school in 2012, and purchasing a vehicle for his daughter at about the same time was costly.

(Government Exhibit 7.) Applicant began falling behind on his mortgage in 2013 and has not been current since then. Applicant's states that his delinquent taxes were caused by poor planning and not properly withholding sufficient taxes for several years, in an attempt to pay for his lifestyle, which is beyond his means. Applicant also indicates that in July 2013, his wife was impacted with a reduction in force by her employer which resulted in significant loss of income for the family. He states that since August 2015, his wife started new employment and they were on a path of financial recovery when they had to completely exhaust their savings due to an incident where mold was found in their home that needed remediation. Applicant has not always made the right choice in determining how to spend his money, and as a result fell far behind on many of his debts.

Applicant became indebted to the following creditors set forth in the SOR:

a.. Applicant is indebted to a bank for an account past due in the approximate amount of \$6,301, with an total outstanding balance of \$450,109. Applicant explained that this debt was for home repairs after mold was found behind his kitchen counter not covered by his home owners insurance. Applicant states that he appealed the denial of the claim and lost. The debt remains outstanding.

b. Applicant is indebted to a creditor for an account placed for collection in the approximate amount of \$7,595. Applicant states that on May 15, 2017, he set up an installment payment plan of \$163 monthly and that the correct amount owed is \$4,297. The account remains owing.

c. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$6,879. Applicant rejected a settlement offer of \$2,063. Applicant states that on May 15, 2017, he set up a payment arrangement for monthly installments of \$200. The account remains owing.

d. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,016. Applicant states that he made payment arrangements and issued two electronic checks in the amount of \$381 totaling \$762. He contends that the account will be paid in full on June 2, 2017. Applicant's Exhibit G shows the debt has been paid.

e. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$956. Applicant states that on May 15, 2017, Applicant made payment arrangements, and that balance was \$406.70. He states that he issued one electronic check in the amount of \$406.70. He contends that the account will be paid in full on May 18, 2017. Applicant's Exhibit G is correspondence from the creditor, and shows that the debt is being resolved.

f. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$630. Applicant states that he incurred the debt in May 2014, and that the balance on the account was \$384. He states that he paid the debt in full on

February 2, 2017. Applicant's Exhibit G show correspondence from the creditor, and that the debt has been settled.

g. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$315. Applicant states that on May 15, 2017, Applicant contacted the creditor and paid the bill in full on May 16, 2017. Applicant's Exhibit G shows correspondence from the creditor, and that the balance has been paid.

h. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$544. Applicant states that he made payment arrangements and issued two electronic checks in the amount of \$175, totaling \$350. He contends that the debt was to be paid in full on June 2, 2017. Applicant's Exhibit G shows correspondence from the creditor, and that the balance has been paid.

i. Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$20,036 for tax year 2012. Applicant states that the balance is \$14,097.59, and that he is following an installment agreement paying \$350 monthly since approximately September 2012. Applicant's Exhibit H is an installment agreement summary from the IRS that does not reflect payments.

j. Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$18,894 for tax year 2013. Applicant states that he is following an installment agreement paying \$350 monthly since approximately September 2012. Applicant states that he contacted the IRS on May 15, 2017 and was told that he owes a balance of \$19,139.94 for back taxes for tax year 2011. Applicant's Exhibit H is an installment agreement summary from the IRS that does not reflect payments.

k. Applicant is indebted to the state for delinquent taxes in the approximate amount of \$4,000 for tax year 2012. Applicant states that since 2012, he was enrolled in automatic deductions (legal garnishment) to have \$200 withdrawn from his account every pay period to pay this debt. He contends that the debt was paid in full in 2012. Applicant's Exhibit I is garnishment record showing payment in full.

l. In about 2014, the state franchise tax board entered a tax levy against the Applicant in the approximate amount of \$5,785.14. Applicant states that since 2014, he was enrolled in automatic deductions (legal garnishment) to have \$200 withdrawn from his account every pay period to pay this debt. He contends that the debt was paid in full in 2014. There is nothing in the record to address this debt.

m. In about 2016, the state taxation authority entered a tax levy against the Applicant in the approximate amount of \$2,722.74. Applicant states that since 2016, Applicant was enrolled in automatic deductions (legal garnishment) to have \$200 withdrawn from his account every pay period to pay this debt. He contends that the debt was paid in full in 2016. Applicant's Exhibit I is garnishment record showing payment in full.

n. In about 2017, the state franchise taxation authority entered a tax levy against the Applicant in the approximate amount of \$643.79. Applicant states that since 2017, he

was enrolled in automatic deductions (legal garnishment) to have \$200 withdrawn from his account every pay period to pay this debt. He contends that the debt was paid in full in March 2017. Applicant's Exhibit I is garnishment record showing payment in full.

Since the issuance of the SOR, Applicant states that he has taken significant steps to address his debts. In May 2017, Applicant contacted a credit counseling firm to assist him in resolving his debt and establishing a budget. (Applicant's Exhibit K.) Applicant states that he is being helped in negotiating resolutions with his debtors which has helped him to get control of his finances. In summary, he contends that after the issuance of the SOR, he addressed approximately \$17,000 of his debt detailed in allegation 1.a., 1.b., 1.d., 1.e., 1.g., and 1h. of the SOR. He states that he is now on a payment plan to pay his back taxes. Applicant states that he has now paid off his state back taxes but his Federal back taxes remain significant. He states that he currently owes about \$15,000 in Federal back taxes.

Performance Evaluations of the Applicant from 2011 through 2016 indicate that on the job he has consistently either met expectations, exceeded expectations, or been a model leader in every category. (Applicant's Exhibit F.)

Letters of recommendation from wife, friends, mother-in-law, friends, peers, spiritual leaders and other professional associates of the Applicant attest to his sense of reliability and trustworthiness. They consider him to be law abiding, kind generous, loyal and committed to his work. (Applicant's Exhibit L.)

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. Four 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;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant's history of excessive indebtedness shows unreliability, untrustworthiness and poor judgment. Applicant's actions demonstrate that he has consistently spent beyond his means for many years, and show both a history of and an inability or a 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.

Admittedly, Applicant has made some headway in resolving his debts. However, to allow them to become this excessive does not demonstrate good judgment. To scurry at the last minute to resolve his excessive indebtedness does not show a pattern of responsibility. In fact, it shows that he is normally irresponsible with his finances. Applicant has paid several of his delinquent debts and has attempted to resolve some of his tax debt. However, he still remains significantly indebted to the Federal Government. Furthermore, although some of his financial problems may have been aggravated by circumstances beyond his control, namely his wife's loss of income, there is no evidence to show that he adjusted his spending to account for that situation. At this

point, it cannot be assumed that all the debts have been resolved or that he has achieved financial stability. Given the volume of debt presented, under the particular facts presented, there is insufficient evidence that he has acted reasonably and responsibly. His actions clearly demonstrate unreliability, untrustworthiness, and poor judgment.

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.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	Against Applicant

Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	For Applicant
Subparagraph 1.n.:	For 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