



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



In the matter of:)
)
) ISCR Case No. 17-00690
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell Esq., Department Counsel
For Applicant: *Pro se*

February 23, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

On November 23, 2015, Applicant submitted a security clearance application (e-QIP). (Item 5.) On April 5, 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 June 20, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On July 14, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant on July 17, 2017, and received by him on July 29, 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 the documents are marked and admitted into evidence as Applicant's Exhibit A. Applicant did not object to Items 1 through 9, and they are admitted into evidence, hereinafter referenced as Government Exhibits 1 through 9.

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 39 years old. He has a Bachelor's degree. He is employed with a defense contractor as a Case Liaison. He is applying for a security clearance in connection with his employment. Applicant began working for his current employer in November 2015.

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 nine delinquent debts totaling in excess of \$85,000. (Government Exhibit 1.) Applicant denies each of the delinquent accounts listed in the SOR. (Government Exhibit 4.) Credit Reports of Applicant dated January 7, 2016; December 28, 2016; and July 14, 2017; confirm the indebtedness listed in the SOR. (Government Exhibits 6, 7, and 8.)

Most of the delinquent debts set for in the SOR are student loan accounts. There are also two delinquent medical debts. Applicant states that he has hired a law firm to help him get the delinquent debts removed from his credit reports. (Government Exhibit 4.) Applicant stated that when the debts became delinquent, the creditor sent the notices to his parents' house. He states that he consolidated the student loan accounts in early 2016, and started paying \$175 monthly. (Government Exhibit 9.) The record is not clear as to why he stopped making the payments.

Applicant's most recent credit report shows that two of Applicant's student loans are in deferment. He also has two that are about 90 days past due with balances of

about \$45,000 and \$33,000. He also has one student loan that is in collection for the amount of about \$4,170. (Government Exhibit 6.)

Applicant submitted a response to the FORM, which includes what he characterizes as a loan repayment plan dated July 30, 2017, indicating that his first payment was scheduled to start on September 2017, in the amount of \$40.47. A second student loan repayment plan for another delinquent student loan shows that those payments were to start on September 11, 2017, in the amount of \$22.02. Applicant provided another document indicating that he had two student loans totaling \$8,831.26. This information is inconsistent with what is set forth in his credit reports. None of the information submitted by the Applicant has been explained or can be deciphered. Applicant has hired a credit counseling company to assist him with resolving the debt, and budgeting his finances. He states that he now feels more comfortable about being able to satisfy his loans earlier and more efficiently. However, there is no evidence in the record to show that Applicant has made even one payment toward the payment plans he presented nor does he explain how these payment plans are relevant to the debts listed in the SOR.

The following debts became owing and remain outstanding:

1.a. A delinquent student loan account was placed for collection in the approximate amount of \$37,141. The account remains outstanding.

1.b. A delinquent student loan account was placed for collection in the approximate amount of \$27,517. The account remains outstanding.

1.c. A delinquent student loan account was placed for collection in the approximate amount of \$8,342. The account remains outstanding.

1.d. A delinquent student loan account was placed for collection in the approximate amount of \$6,409. The account remains owing.

1.e. A delinquent student loan account was placed for collection in the approximate amount of \$4,158. The account remains owing.

1.f. A delinquent student loan account was placed for collection in the approximate amount of \$740. The account remains outstanding.

1.g. A delinquent medical account was placed for collection in the approximate amount of \$668. The account remains outstanding.

1.h. A delinquent medical account was placed for collection in the approximate amount of \$100. The account remains outstanding.

1.i. A delinquent account was placed for collection in the approximate amount of \$65. The account remains owing.

Applicant submitted several documents that indicate that a specific payment plan was to begin regarding two of his student loans. The other delinquent debts in the SOR were not addressed. There is no further explanation given. Given the complexity of these debts, more explanation is necessary to understand the proper application of the documents provided. Applicant has failed to provide any further evidence to support the fact that his delinquent debts are either paid or being paid. The record remains void of sufficient mitigation.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 has delinquent student loans that have not been resolved. He has recently indicated that he has set up payment arrangements to resolve the debts. However, there is no evidence provided to show that he has started or followed the payment plans to resolve the debt. Other than hiring a credit counseling firm to assist him, there is no evidence in the record to prove that he has even made one payment toward resolving the debt outlined in the SOR. The evidence is sufficient to raise the above disqualifying conditions.

Assuming Applicant had some difficulties after college, finding employment, the following condition is arguably applicable. 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 incurred student loan debt that became delinquent because he did not or could not pay the loans. Under the particular circumstances here, Applicant has failed to establish that he acted reasonably or responsibly with respect to his debts. Applicant has not provided evidence to show that he has paid any of his delinquent debt nor has he demonstrated that future financial problems are unlikely. He has clearly not 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. There is no information to explain what, if anything, has negatively impacted Applicant's financial situation. Furthermore, 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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 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 for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge