



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



In the matter of:)
)
) ISCR Case No. 17-00714
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*
10/27/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. He has not mitigated concerns raised by his unresolved delinquent debt. Clearance is denied.

Statement of the Case

On April 13, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance.

Applicant timely answered the SOR and requested an administrative determination. On July 12, 2017, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM), which contained five Items. Applicant received the FORM on July 20, 2017. Applicant did not respond to the FORM.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the 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 The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant is 58 years old, earned an undergraduate degree in 1989, and has been employed by a Federal contractor since 2015. (Item 3) He is divorced as of 2004 and has two children. He admits and his credit report shows five collection accounts and two judgments for a total of about \$31,000. (Items 4 and 5) Applicant has not provided proof of satisfaction of the judgments, nor payments toward his collection accounts. He has not held a security clearance. Applicant completed his security clearance application in March 2016, disclosing that he had delinquent accounts. (Item 3)

Applicant's explanation for his financial difficulties is divorce and unemployment. However, he noted that his child support payments ended in 2009. He noted unemployment, and stated that he is working with a credit company to seek solutions to his debts or that he has set up a payment plan, but he provided no documentary evidence to support his assertion. He also noted tax issues. He stated that his funds were exhausted in 2009. He has not chosen to file a bankruptcy petition. He intends to pay his debts. (Answer to SOR)

Applicant's current financial status is not known as he provided no information. He referred to a hardship, but provided no details. He did not report any financial counseling. He intends to pay the delinquent debts, but he did not have a definite plan. He did not respond to the FORM to supplement the record.

Policies

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 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 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 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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Financial Considerations

Applicant’s finances remain a source of concern. Failure to meet one’s 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.² Applicant’s admissions and the credit reports establish the Government’s *prima facie* case that Applicant has a history of not meeting his financial obligations or paying his tax obligations and that he has an inability to do so.³ Applicant presented no evidence to mitigate the concerns about his plans to resolve the issues by working with a collection company, but he intends to pay his debts. He chose not to file bankruptcy. A promise to

² AG ¶ (18).

³ AG ¶¶ 19(a),(c).

pay in the future is not enough to mitigate the financial concerns. Applicant's financial problems are ongoing and were caused by events beyond his control, but the divorce was in 2004 and he has not shown that he acted responsibly. Although Applicant has expressed a desire to repay his creditors, the alleged delinquent accounts remain unresolved and Applicant did not present a plan for resolving them.

After a review of the record and a consideration of the whole-person factors at AG ¶ 2(d), I conclude that Applicant's financial problems render him unsuitable for access to classified information at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to reapply for national security eligibility in the future. The award of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, he may present persuasive evidence of financial rehabilitation and reform in the future.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraph 1.a-1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge