



Applicant for Security Clearance

06/27/2018

Decision

Applicant answered the SOR in writing (Answer) on May 19, 2017. He initially requested a decision based on the written record, but changed his request to a hearing before an administrative judge in an email dated October 12, 2017. The case was assigned to me on October 19, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on December 13, 2017. I convened the hearing as scheduled on January 9, 2018. The Government offered Government Exhibits (GE) 1 through 6. GE 1 through 4, and 6 were admitted without objection. Applicant objected to GE 5, based on relevancy. GE 5 was admitted over Applicant's objection. (Tr. 20.) Applicant testified on his own behalf, and presented Applicant Exhibit (AE) A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 18, 2018. The record was left open for the receipt of additional evidence until April 23, 2018. Applicant submitted nothing further.¹

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* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions² 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 in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, 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 promulgated in SEAD 4.

Findings of Fact

Applicant is 43 years old. He legally separated from his ex-wife in 2009, and their divorce was finalized in 2011. He has three children, ages 23, 15, and 12. He has worked for his employer, a government contractor, since October 2016. He served in the Marine Corps from 1997 to 2002, and achieved the rate of corporal, E-4. He worked as a civilian employee of the Department of the Navy from 2006 to 2009. He was a civilian employee of the Army from 2009 to June 2014, and was stationed overseas. He earned a bachelor's degree in 2006, and has enrolled in two master's degree programs, but is not currently taking classes toward earning those degrees. He has successfully held a security clearance, without incident, since approximately 1998. (GE 1; Tr. 22, 35-38.)

¹ On June 13, 2018, I emailed Applicant, Department Counsel, and DOHA administrative support staff to verify nothing further was submitted by Applicant. That email, and the negative replies I received, were marked Hearing Exhibit (HE) I, and were made part of the record. Applicant did not reply to my email.

² SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

In SOR ¶¶ 1.a through 1.m, Applicant was alleged to be indebted to 13 creditors in the amount of \$270,021. He admitted the debt in SOR ¶ 1.a, but denied SOR ¶¶ 1.b through 1.m.

Applicant attributed his financial problems to his 2011 divorce. His ex-wife was on depression medication and stopped taking her medication when they moved to a European nation in 2009. She experienced difficulties adjusting to life overseas, and decided to return to the United States with their children. Applicant had taken a \$15,000 advance in pay to help him afford the move to Europe, which was deposited into their joint-bank account. When his wife decided to file for divorce, six months after leaving Europe, she completely depleted their joint account, and left Applicant in a dire financial situation. He reported his financial problems at that time to his security office and his chain of command. (Tr. 40-42.) His debts are as follows.

Applicant was alleged to be delinquent on a child-support obligation in the amount of \$153,852, as stated in SOR ¶ 1.a. He had been paying child support since he legally separated from his ex-wife in 2009 at the mutually agreed upon amount of \$2,000 per month. However, in 2011 his ex-wife obtained a court order awarding her \$4,800 per month in child support since 2009, based in part on improperly calculated figures. This order immediately placed him in arrears. He was advised the only way to fight the court order while abroad was to file international kidnapping charges against his then wife. He did not want the mother of his children to be incarcerated, so he chose not to press charges against her. He could not afford legal representation during his divorce proceedings. He has been engaged in litigation for visitation rights and a reduction in child support payments since returning to the United States in 2014. In 2015 Applicant agreed to pay \$500 per month toward the arrearages, which was increased to \$750 in January 2018. His monthly court-ordered support payment is currently \$2,143. Both payments, totaling \$2,893, are garnished directly from his paycheck. His past-due support currently totals \$155,841 and includes 10% interest. He is current on this court-ordered payment arrangement. Applicant is resolving this debt. (GE 3; GE 4; GE 6; AE A; Tr. 24-30, 43-61.)

Applicant was alleged to be indebted on a charged-off account in the amount of \$17,370, as stated in SOR ¶ 1.b. This debt related to a debt consolidation loan secured by Applicant's former home. The account was opened in February 2008 and became delinquent in 2010. His ex-wife was awarded the home in the divorce and he claimed she was responsible for this loan. He did not provide a copy of the divorce decree to substantiate this claim. He testified that she filed for bankruptcy and included this debt. He testified he disputed this debt through the credit reporting agencies and provided proof of the dispute to his security officer. However, that documentation is not included in the record. Instead, it still appears delinquent on his October 2017 credit report. This debt is unresolved. (GE 3; GE 6; Tr. 31, 65-68.)

Applicant was alleged to be indebted on a charged-off account in the amount of \$7,878, as stated in SOR ¶ 1.c. This debt was also listed in SOR ¶¶ 1.d and 1.m, as it has been placed with different collection agents, but all three accounts represent the

same underlying debt related to a repossessed automobile. The debt represents the remainder of what he owed on the loan after the vehicle was repossessed. Applicant testified that he disputed this debt through the credit reporting agencies. However, it remains on Applicant's October 17, 2017 credit report as a delinquent account. It is unresolved. (GE 3; GE 4; GE 6; Tr. 31, 68-72, 82.)

Applicant was alleged to be indebted on a collection account in the amount of \$1,400, as stated in SOR ¶ 1.e. This was an account that Applicant closed when he switched to another cell phone service provider. The new service provider promised to pay off the cancellation fees associated with the switch, but failed to do so. Applicant disputed this debt as "it was some kind of a mix-up between" the two cell phone service providers. He submitted the debt for payment to the second service provider, but did not know the current status of that account at the time of the hearing. It is listed on his October 2017 credit report as a collection account. It is unresolved. (GE 3; GE 6; Tr. 32-33, 73-76.)

Applicant was alleged to be indebted on a collection account in the amount of \$529, as stated in SOR ¶ 1.f. This debt was for a retail store credit card. It became delinquent in 2016. Applicant testified that he disputed this debt through the credit reporting agencies, but presented nothing further to document this dispute. It is unresolved. (GE 4; Tr. 31.)

Applicant was alleged to be indebted on a state tax lien in the amount of \$1,648, as stated in SOR ¶ 1.g. The lien was filed in January 2012. He testified that he had not been a resident of this state for a five-year period, and did not know why the tax lien was filed. He was not aware of the lien in February 2016, when he submitted his most recent security clearance application. Since learning of the lien from the security clearance investigator, he claimed to have filed paperwork with the state to dispute the lien. He did not present copies of that dispute. He does not know if that dispute was resolved in his favor. (GE 4; GE 6; Tr. 30, 61-65.)

Applicant was alleged to be indebted on four collection accounts in the amounts of: \$10,542, as stated in SOR ¶ 1.h; \$10,586, as stated in SOR ¶ 1.i. These are both for the same underlying account. Similarly he was alleged to be indebted in the amount of \$22,133, as stated in SOR ¶ 1.j; and \$22,227, as stated in SOR ¶ 1.k. Those two accounts relate to the same student loan. These two delinquent student-loan accounts were opened in 2010 and 2011. Applicant testified they were placed in deferment status. While, three unrelated student loans identified on his March 2016 credit report were identified as deferred, there was no evidence presented that the student loans alleged on the SOR were deferred or resolved. He last contacted this creditor in 2016. (GE 4; Tr. 32, 77.)

Applicant was alleged to be indebted on a collection account in the amount of \$2,753, as stated in SOR ¶ 1.l. This debt was originally owed to a bank. It was placed for collection in 2016. Applicant testified that he disputed this debt through the credit reporting agencies, but presented no documentation to support his claim. (GE 4; Tr. 3.)

In addition to the SOR alleged debts, Applicant is indebted on a new collection account in the amount of \$102. (GE 6.) Applicant testified that he was not familiar with this account. (Tr. 83-84.) He claimed to have a monthly excess of “about a thousand dollars after bills are paid.” (Tr. 87.)

The SOR, in ¶¶ 2.a and 2.b, also alleged that Applicant failed to disclose his delinquent child-support, tax lien, and delinquent consumer accounts in Section 26 of his e-QIP. Applicant denied intentionally falsifying his e-QIP. He asserted that he thought he only needed to disclose new debts. He testified that he was not aware of the state tax lien when he completed the e-QIP, because he had not lived in that state for the preceding five years. He also testified that he had previously reported his delinquent child-support obligation through his chain of command and to his security officer. He assumed, incorrectly, that he did not need to report information that he had previously disclosed. (Answer; Tr. 92-94.) However, he admitted he did not report his consumer debts that he was aware of because he was “working on stuff” to resolve them, and “didn’t feel like it was anything that needed to be reported.” (Tr. 93, 97-98.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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(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. 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. Directive ¶ E3.1.15 states an “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 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 an 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.

Finally, 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant incurred \$153,852 in delinquent child support; two delinquent student loans totaling \$32,675; a \$1,648 state tax lien; and \$29,930 in other delinquent debt.³ His debts became delinquent between 2010 and the present. There is sufficient evidence to support the application of the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and
- (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 are ongoing. He has an eight-year history of delinquencies. He has had continuous financial problems over the past eight years and continues to accrue debt, as demonstrated by the additional unresolved account on his most recent credit report. He has not demonstrated that future financial problems are unlikely to recur. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed his recent delinquencies to his separation and divorce. These are circumstances beyond his control. He has responsibly addressed his delinquent child support and is making payments to resolve that debt. However, he failed to establish that

³ Debts found to be duplicated on the SOR are only counted once in these figures.

he acted reasonably or responsibly with respect to the majority of his other debts. He claimed to have disputed them, but provided little proof of the basis for the dispute. His two delinquent student loans, the state tax lien and \$29,930 in other delinquent debt remain unresolved. He had the burden to demonstrate that he addressed his debts in a responsible or timely manner, and he has not met that burden. Full mitigation under AG ¶ 20(b) has not been established.

Applicant is adhering to his court-ordered payment arrangement to resolve his delinquent child-support obligation. However, his other SOR debts remain unresolved. He produced no evidence of participating in financial counseling. There are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶¶ 20(c) or (d) has not been fully established.

Applicant claimed to have contested the delinquencies in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.h, 1.j, and 1.l with the credit reporting agencies, for various reasons. He claimed to have contested the state tax lien directly with the state. For the mitigating condition to be applicable, Applicant must provide “documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” He failed to present any documentation to support his claims. Mitigation under AG ¶ 20(e) has not been established.

AG ¶ 20(g) is inapplicable to this case. Applicant failed to present evidence that he has arrangements with the state tax authority pay or otherwise resolve his tax lien.

Guideline E: Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to disclose his delinquent child-support, tax lien, and delinquent consumer accounts in Section 26 of his e-QIP. While he credibly testified that he did not disclose his lien because he was unaware of it, and that he did not list the child-support on the e-QIP because he had previously disclosed it to his security officer, his explanations about not listing his other SOR-alleged debts because he was trying to address them show those omissions were intentional. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not present sufficient evidence to mitigate the security concern raised by his intentional omissions of his student loans and consumer debts from his e-QIP. Applicant's omissions were recent, deliberate attempts to conceal serious financial issues, and cast doubt on his reliability, trustworthiness, and good judgment. After considering the mitigating conditions outlined above in AG ¶ 17, none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct his falsification and concealment. He did not claim to be ill-advised in completing his e-QIP. Falsifying material information is a serious offense, and Applicant has done nothing to show that similar lapses in judgment are unlikely to occur. Further, he failed to take responsibility for his actions. He has not provided sufficient evidence to meet his burden of proof with respect to his personal conduct. He remains vulnerable to exploitation, manipulation, and duress.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all the 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is a 43-year-old

veteran, who has held a security clearance since 1998. He has the maturity, and experience of one who should be aware of the need to resolve his delinquencies in a timely manner and to be fully forthcoming with the Government about them on his e-QIP. While his divorce and subsequent child support payments were unexpected and costly, he has not demonstrated responsible action over the past eight years with respect to the rest of his financial accounts. 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 security concerns arising under Guidelines F and E.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant ⁴
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant ⁵
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant ⁶
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

⁴ While SOR ¶ 1.c is found to be unresolved, the duplicate entries of this debt in ¶¶ 1.d and 1.m are resolved in his favor to avoid counting the debt more than once.

⁵ This debt is found in Applicant's favor to avoid counting it twice, although the underlying debt remains unresolved.

⁶ This debt is found in Applicant's favor to avoid counting it twice, although the underlying debt remains unresolved.

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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge