



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



In the matter of:

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ISCR Case No. 17-01052

Applicant for Security Clearance

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On May 18, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility for him. 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 June 7, 2017, Applicant answered the SOR admitting all of the allegations, and requested a decision based on the written record instead of a hearing. On June 27, 2017, Department Counsel prepared a file of relevant material (FORM). Applicant received a

copy of the FORM on July 3, 2017. He filed a response that was received on July 24, 2017. The case was assigned to me on October 19, 2017. On December 6, 2017, I re-opened the record, allowing Applicant through January 12, 2018 to submit additional items for incorporation into the file. I gave Department Counsel through January 26, 2018 to submit any additional information in response to any supplemental information that Applicant submitted. Applicant did not submit any additional information by the extended due date, therefore, on January 19, 2018, I closed the record.

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.¹

Findings of Fact

Applicant is 32 years old. He is a high school graduate who has worked for a federal contractor since 2007, and he has held a security clearance since 2008. (Item 3 at 24)

Applicant has incurred approximately \$59,000 of delinquent debt. In addition, he failed to timely file his federal and state income tax returns in 2013 and 2014. The debt alleged in subparagraph 1.a is a past-due automobile loan payment totaling \$952 with a balance of \$19,993. Applicant has been satisfying this debt through a weekly wage garnishment, totaling approximately 25 percent of his salary. It is unclear from the record when the garnishment began. The payments range from \$171 per week to \$348 per week, depending on whether Applicant works overtime. (Response at 18) As of July 2017, Applicant had reduced the balance by approximately \$4,450. (Response at 3)

Applicant did not timely file his 2013 and 2014 state and federal income tax returns (subparagraphs 1.w and 1.x) because he was "working a lot of overtime and forgot." (Item 3) Applicant has filed federal and state income tax returns for both 2013 and 2014. (Item 3 at 26; Response at 4-7) He satisfied his delinquent state income taxes through a combination of an involuntary wage garnishment and a repayment plan. (Item 3 at 26; Response at 4-7) The amount of 2013 federal income tax debt that Applicant satisfied totaled \$2,000, and the amount of the 2013 state income tax that Applicant satisfied totaled \$1,237. (Item 3 at 26; Response at 4-5) Applicant has paid the 2014 federal and state income tax returns through a combination of an involuntary garnishment and a repayment plan. (FORM at 2)

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Applicant has not made any other payments towards the satisfaction of his delinquent debts. Given the amount of money garnished from his pay, he “can only do but so much” to reduce his other debts. (Response at 2)

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 access to classified information 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's SOR delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), "failure to file, or fraudulently filing, Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required."

The following mitigating conditions are potentially applicable:

AG ¶ 20(a) 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;

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, or 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 person has received or is receiving 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.

Although Applicant did not timely file his 2013 and 2014 federal and state income tax returns, as alleged in subparagraphs 1.w and 1.x, he has since filed them, and satisfied the amounts due. AG ¶ 20(g) applies, therefore, I resolve subparagraphs 1.w and 1.x in his favor.

Subparagraphs 1.n and 1.o are duplicate allegations of a \$196 medical bill. Whenever a debt is duplicated on multiple SOR subparagraphs, the duplicate allegations must be found in Applicant's favor. (ISCR Case No. 03-04704 (App. Bd., Sep. 21, 2005) at 3) Therefore, I resolve subparagraph 1.o in Applicant's favor. Applicant presented no evidence of having paid the debt alleged in subparagraph 1.n.

Applicant noted in his Response to the FORM that he was doing the best that he can to satisfy his debts, and was unable to make any progress given the amount of money that the automobile loan company was garnishing from his wages. This assertion is not without merit. There is no requirement that SOR debts must be satisfied entirely, or paid in any particular order in order for an applicant to be granted a security clearance. Nevertheless, the Applicant had the burden of proof to develop the record, offering

evidence of what, if any, circumstances beyond his control contributed to his financial delinquencies, and evidence that his finances are under control. Here, despite my re-opening of the record to allow for the production of more evidence, Applicant failed to submit any additional information. Under these circumstances, none of the remaining mitigating conditions apply. Applicant has failed to mitigate the financial considerations security concerns.

Whole-Person Concept

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).² The record contains scant additional evidence to weigh in assessing Applicant's security clearance eligibility. Ultimately, Applicant failed to carry the burden.

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
Subparagraphs 1.a – 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p – 1.v:	Against Applicant
Subparagraph 1.w – 1.x:	For Applicant

² 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 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.

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge