



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



In the matter of:

ISCR Case No. 17-01270

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

January 26, 2018

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On June 19, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 2.) On May 17, 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; and Guideline E, Personal Conduct. (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 May 22, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 19, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on June 20, 2017, and received by him on June 26, 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 failed to respond to the FORM. Applicant did not object to Items 1 through 5, and they are admitted into evidence as Government Exhibits 1 through 5.

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 58 years old. He holds the position of Vice President of Quality Control/ Chief Inspector and is employed with a defense contractor. He is seeking to retain 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. The SOR identified eight delinquent debts totaling approximately \$143,960. The debts include a delinquent home mortgage, credit card debt, and medical bills that have either been charged off or placed for collection. Applicant has been working for his current employer since September 2013.

Applicant admitted each of the delinquent debts set forth under this guideline. His credit report dated September 2016, confirms that these debts remain owing. (Government Exhibit 4.) Applicant claims that his job requires that he travels extensively and his wife handles all of the household financial matters.

The following debts became owing and remain outstanding:

1.a. A delinquent debt owed to a bank for a mortgage account was past due in the approximate amount of \$28,893. The account is in foreclosure status with a total loan balance of \$131,058. The account remains owing. (Government Exhibit 4.)

1.b. A delinquent credit card debt owed to a bank was placed for collection in the approximate amount of \$5,100. The account remains owing. (Government Exhibit 4.)

1.c. A delinquent debt owed to a creditor was charged off. The debt remains owing. (Government Exhibit 4.)

1.d. A delinquent debt owed to a creditor was placed for collection by CITIBANK N.A. in the approximate amount of \$6,669. The account remains owing. (Government Exhibit 4.)

1.e. A delinquent medical account owed to a creditor was placed for collection in the approximate amount of \$520. The account remains owing. (Government Exhibit 4.)

1.f. A delinquent medical account owed to a creditor was placed for collection in the approximate amount of \$300. The account remains owing. (Government Exhibit 4.)

1.g. A delinquent medical account owed to a creditor was placed for collection in the approximate amount of \$213. The account remains owing. (Government Exhibit 4.)

1.h. A delinquent medical account owed to a creditor was placed for collection in the approximate amount of \$100. The account remains owing. (Government Exhibit 4.)

There is no documentation in the record to show that Applicant has made any financial arrangements to pay any of his delinquent debt. Thus, each of the debts listed in the SOR, continue to remain delinquent and owing.

### **Guideline E – Personal Conduct**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-OIP) dated June 19, 2016. (Government Exhibit 2.) In response to Section 26 concerning his financial record, Applicant was asked if “in the past seven years, has he had any possessions or property voluntarily or involuntarily repossessed or foreclosed? In the past seven years, has he defaulted of any type of loan? In the past seven years, has he had bills or debts turned over to a collection agency. In the past seven years, has he had any account or credit card suspended, charged off, or canceled for failing to pay as agreed. In the past seven years has he been over 120days delinquent on any debt not previously entered?. . . and is he currently over 120 days delinquent on any debt?” The Applicant answered “NO” to each question. These were false responses. Applicant failed to disclose the delinquent debts set forth in paragraph 1, above.

Applicant stated that his wife handles the household finances and he was not aware of his financial situation. In view of the number and amount of these debts, it appears that he deliberately falsified his answers in response to the above questions on his security clearance application. In fact, it is unlikely that he would not have known that in June 2016 his home was foreclosed upon.

## Policies

When evaluating an applicant's suitability for a security clearance, 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. 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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 remains excessively indebted to the creditors listed in the SOR. He has failed to prove that he has done anything to resolve his delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

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.

It appears that Applicant's home was in foreclosure in June 2016. There are also two credit card debts over \$5,000. There is no evidence to demonstrate that Applicant has done anything to resolve his debt. He has failed to establish that he acted reasonably, responsibly or in good-faith to repay his financial obligations or establish a

meaningful track record of repayment. Furthermore, Applicant has not demonstrated that future financial problems are unlikely. There are no indications that his financial problems are being resolved or are under control.

## **Guideline E, Personal Conduct**

The security concern for the personal conduct guideline 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

From the evidence provided, Applicant deliberately failed to disclose his delinquent debts and his foreclosure in response to questions on this security clearance application. Even if his wife handles the household finances, he must know enough about them to properly and correctly answer the questions on his security clearance application. If he did not know, he has the responsibility to find out before simply putting down inaccurate information on the application. The fact that he did not list his debt in response to questions on his security clearance application indicates behavior that shown questionable judgment, unreliability, and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

After considering the mitigating conditions outlined above in AG ¶ 17, none of them were established in this case. Applicant intentionally and deliberately attempted to conceal material information from the Government regarding his financial situation. Falsifying material information is a serious offense, and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. He has not provided sufficient evidence to meet his burden of proof with respect to his personal conduct.

### **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 and Guideline E in my whole-person analysis. Applicant has failed to provide any documentation to show proof of payment toward his delinquent debts. He also deliberately falsified his security clearance application concerning his finances. Applicant's credibility is in question. He has not been candid and upfront with the Government about his financial affairs. He obviously does not understand the need to

ensure that only individuals with whom the Government can trust can be provided access to classified information. Applicant has not demonstrated that he meets these qualifications.

Overall, the record evidence leaves me with questions and or 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 and Personal Conduct 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

Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge