



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



In the matter of:

ISCR Case No. 17-01344

Applicant for Security Clearance

Appearances

For Government: Tovah Minster Esq., Department Counsel

For Applicant: *Pro se*

January 26, 2018

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On April 11, 2016, Applicant submitted a security clearance application (e-QIP). On May 18, 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 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 9, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2) On July 12, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was mailed to Applicant on July 14, 2017, and received by him on July 21, 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

submitted a respond to the FORM, with copies of letters from each creditor verifying his payments. This response was admitted into evidence. 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 44 years old. He is married a second time with two children. He has a bachelor's degree, and is employed with a defense contractor as an Outside Machinist. He is applying for 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 five debts totaling approximately \$24,0000 that include both delinquent loans, medical bills and credit card accounts. Applicant admits to each of the delinquent accounts listed in in the SOR.

Credit Reports of Applicant dated July 13, 2016, and March 29, 2017, confirm the indebtedness listed in the SOR. (Government Exhibits 4 and 5.) Applicant served on active duty in the United States Navy from March 1996 to March 2010 when he was honorably discharged. Applicant has been working for his current employer since January 2012.

Applicant admits each of the debts set forth in the SOR. He explained in his response to the FORM dated August 3, 2017, that his financial problems began in June 2010 when his car was totaled. At that point, things continued to go downhill from there. He was forced to buy another car in order to get to work. About this time, he and his wife separated; and then divorced in 2011. He remarried in 2012. His new wife had some medical concerns which required multiple visits to the hospital. His daughter was born, and then a son, and the cost of providing food, clothing and shelter for a family was expensive. The heating and air conditioning in their house did not function and had

to be repaired. They experienced a house fire, where his wife received 2nd and 3rd degree burns, resulting in even more medical bills. Both cars had to be repaired and Applicant spent money caring for his sister. His finance resources were depleted, including his credit cards and loans.

The following debts were alleged on the SOR:

1(a) A delinquent debt owed to a credit union was charged off in the approximate amount of \$14,492. According to the payment agreement, Applicant is paying the creditor \$50 per month and will continue to do so until the debt is paid in full. (See Response to FORM and letter from the credit union.)

1(b) A delinquent debt owed to credit union was charged off in the approximate amount of \$7,887. Accordingly to the payment agreement, Applicant is paying the creditor \$50 per month and will continue to do so until the debt is paid in full. (See Response to FORM and letter from the credit union.)

1(c) A delinquent credit card debt was charged off in the approximate amount of \$1,787. Accordingly to the payment agreement, Applicant is paying the creditor \$50 per month and will continue to do so until the debt is paid in full. (See Response to FORM and payment history from the creditor.)

1(d) A delinquent medical account was placed for collections in the approximate amount of \$45. Applicant has paid off this debt in full. (See Response to FORM, letter from the creditor.)

1(e) A delinquent medical account was placed for collection in the approximate amount of \$29. Applicant has paid off this debt in full. (See Response to FORM, letter from the creditor.)

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 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 is excessively indebted to the creditors listed in the SOR. Over the past year, he has set up payment arrangements with his creditors and has been paying them \$50 per month towards each debt. 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.
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant stated that a series of unexpected problems caused him to become excessively indebted. A divorce, a new marriage, children, providing food, clothing and shelter for his family, medical issues, and care for his sister became expensive and new to his program. When Applicant could not afford to pay in cash, he simply used his credit cards. He spent beyond his means and now has to play catch up to resolve his indebtedness. Since January 2012, Applicant has been working full time and for the past year, he has been paying his creditors according to the payment arrangements he set up. At this point, he has completely paid off two of his creditors.

Applicant must continue to resolve his debts in compliance with his creditors. So far, he has acted reasonably and responsibly with respect to his debts. Accordingly, it is found that his debts are now under control, and he is no longer spending beyond his means. Furthermore, Applicant has demonstrated that future financial problems are unlikely. There are clear indications that his financial problems are being resolved.

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. Applicant states that he has been paying \$50 per month toward each of his bills. He has completely paid off two of his creditors and has provided proof of these payments. He has also provided documentation substantiating his monthly payments to the creditors. This information confirms that he has been working systematically to resolve his debt. So far he has paid a total of \$700 toward his indebtedness that will continue until the debts are all paid in full. Applicant has demonstrated that he is financially responsible.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge