



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



In the matter of:

ISCR Case No. 17-01539

Applicant for Security Clearance

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

February 20, 2018

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On April 22, 2016, Applicant submitted a security clearance application (e-QIP). On May 26, 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 (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 June 14, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On July 13, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 7 Items, was mailed to Applicant on July 14, 2017, and received by him on July 20, 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 7, and they are admitted into evidence.

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 31 years old. He is married and has three minor children. He has completed some college. He is employed with a defense contractor as a Shift Supervisor. He is applying for a security clearance in connection with his employment. Applicant began working for his current employer in 2015.

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 sixteen delinquent debts totaling in excess of \$25,000. Applicant admits to each of the delinquent accounts listed in the SOR. Credit Reports of Applicant dated July 22, 2016; March 21, 2017; and July 13, 2017; confirm the indebtedness listed in the SOR. (Government Exhibits 4, 5 and 6.)

Applicant failed to explain how he became encumbered with these debts. There is no evidence that he has attempted to satisfy his debts. Furthermore, there is no evidence to show that he has engaged in responsible spending, or that he did not spend beyond his means. Applicant states that he has every intention of paying off his debt. His plan is to save \$3,000 dollars by August, as a buffer in case of emergencies. He then plans to contact his creditors and set up payment plans to start paying off the balances. (Government Exhibit 1.)

The following debts became owing:

1.(a) A delinquent rental account was placed for collection in the approximate amount of \$3,967. The account remains outstanding.

1.(b) A delinquent military housing account was placed for collection in the approximate amount of \$1,856. The account remains outstanding. (Answer to SOR.)

1.(c) A delinquent medical account for an account placed for collection in the approximate amount of \$1,660. The account remains outstanding. (Answer to SOR.)

1.(d) A delinquent cable account for an account in the approximate amount of \$209. The account remains owing. (Answer to SOR.)

1.(e) A delinquent medical account was placed for collection in the approximate amount of \$200. The account remains owing. (Answer to SOR.)

1.(f) A delinquent medical account was placed was placed for collection in the approximate amount of \$149. The account remains outstanding. (Answer to SOR.)

1.(g) A judgment was filed against the Applicant in 2015 in the approximate amount of \$970. The judgment remains outstanding. (Answer to SOR.)

1.(h) A judgment was filed against the Applicant in 2012 in the approximate amount of \$865. The judgment remains outstanding. (Answer to SOR.)

1.(i) A judgment was filed against the Applicant in 2016 in the approximate amount of \$1,428. The judgment remains owing.

1.(j) A delinquent medical account was placed for collection in the approximate amount of \$1,428. The account remains owing. (Answer to SOR.)

1.(k) A delinquent account was charged off in the approximate amount of \$420. The account remains outstanding. (Answer to SOR.)

1.(l) A delinquent account was placed for collection in the approximate amount of \$817. The account remains outstanding. (Answer to SOR.)

1.(m) A delinquent medical account for an account placed for collection in the approximate amount of \$179. The account remains outstanding. (Answer to SOR.)

1.(n) A delinquent medical account was placed for collection in the approximate amount of \$164. The account remains owing. (Answer to SOR.)

1.(o) A delinquent account was placed for collection in the approximate amount of \$52. The account remains owing. (Answer to SOR.)

1.(p) Applicant's wages were garnished by the Department of Education in about March 2016 in the approximate amount of \$10,505. This garnishment order has not been completed. (Answer to SOR.)

There is no documentation in the record to show that Applicant has done anything to resolve this debt. It would have been helpful for Applicant to have provided some evidence and documentation to explain his financial circumstances, namely, how they were incurred, and why, what he has done, if anything to remedy the problem, including information about his current financial state of affairs, as well as any budgets in place to show that his finances are now in order or are improving.

A letter of recommendation submitted on behalf of the Applicant from a Shift Lieutenant, who is also a friend, coworker, and supervisor, indicates that in his opinion, Applicant is a great role model. Applicant helped to mentor this individual and showed him how to handle difficult situations at work. Applicant's work ethic is described as second to none. He is extremely helpful and is well-liked by all who know him. He is considered to be responsible and trustworthy. (See attachment to Applicant's Answer to SOR.)

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 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. He has not indicated that he has set up payment arrangements to resolve the debt or that he has otherwise settled the debt. In fact, there is no evidence in the record 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.

Applicant has failed to explain why he became excessively indebted or what if anything he has done to resolve the debt. Under the particular circumstances here, Applicant has failed to establish that he acted reasonably or responsibly with respect to his debts. Applicant has not addressed any of his delinquent debt nor has he demonstrated that future financial problems are unlikely. It has not been demonstrated that his current financial problems are under control.

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. There is no information to explain what if anything has negatively impacted his financial situation. Applicant has not demonstrated that he is financially responsible.

Overall, 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 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:	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
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge