



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



In the matter of:

ISCR Case No. 17-01658

Applicant for Security Clearance

**Appearances**

For Government: Carroll J. Connelley, Department Counsel

For Applicant: *Pro se*

January 29, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On May 20, 2016, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 3.) On June 6, 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 25, 2017. He denied the sole allegation in the SOR allegations concerning his delinquent debt, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 24, 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 25, 2017, and received by him on July 28, 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 response to the FORM dated August 25, 2017. DOHA assigned the case to me on November 9, 2017. Items 1 through 5 are admitted into evidence. Applicant's response to the FORM was also 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 47 years old and divorced with three children. He received a GED in 1989, and served in the Army National Guard from 1988 through 1994 earning an Honorable Discharge. He is employed by a defense contractor. He is seeking to obtain 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.

Applicant has worked as a union carpenter since 2009, cycling in and out of work. His inconsistent pay has caused him financial problems. According to his e-QIP, in November 2016, Applicant became unemployed again. Since November 2016, Applicant has been receiving unemployment compensation benefits from the state in the amount of \$365 per week. He is currently laid off from employment with the defense industry.

The SOR identified one debt totaling approximately \$20,983. Applicant denied the debt on its face, but went on to discuss and admit in his answer, eQIP and PSI that he accrued the debt primarily as a result of reliance on his credit card to pay for living expenses he incurred following his divorce. Applicant was married in 2000 and divorced in 2015. He has three children, that include one adult child and two minor

children. Credit reports of the Applicant dated August 20, 2016; and April 26, 2017, reflect that the debt remains owing. (Government Exhibits 4 and 5.)

Applicant stated in March 2017, the his financial difficulties were the result of a period of financial strain following his divorce, in an effort to focus on ensuring that he paid his child support obligations, ordered by the court. This led to him using his credit cards for general purposes. Eventually the debt increased so high he could no longer afford to pay it. Applicant claims that he has tried on two occasions to set up payment plans to resolve the debt, but the creditor was not receptive to the agreement. Applicant submitted a response to the FORM, which is a copy of the judgment entered against the Applicant by the collection agency for the creditor. The judgment indicates that Applicant must make weekly payments of \$35 per week starting August 21, 2017, to repay the debt and related court costs, and to avoid wage garnishment. There is no evidence in the record to show that Applicant has been complying with the judgment, paying this debt, or that it has been satisfied.

### **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. 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 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. 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." The applicant has the ultimate burden of persuasion to obtain 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 the 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.

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 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 or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant is delinquently indebted in the amount of \$20,983.37. His actions demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating condition under the Financial Considerations is potentially applicable under 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), and the individual acted responsibly under the circumstances.

It is recognized that Applicant's inconsistent work history as well as his 2015 divorce, prevented him from being able to pay his debt, which is now a court judgment. It is not clear from the record whether Applicant has been working full time, part time, or at all on a consistent basis. Consequently, there is no evidence that Applicant is solvent, or has the means to resolve his extraordinary debt at this time. Furthermore, there is no evidence that he has acted responsibly under the circumstances. His inaction casts doubt on his current reliability, trustworthiness, or good judgment.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated Financial Considerations security concern.

### **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.:                      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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge