



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02232

Appearances

For Government: Nick Temple, Esq., Department Counsel
For Applicant: *Pro se*

10/01/2018

Decision

Curry, Marc E., Administrative Judge:

Although Applicant has paid two of his outstanding debts, and made payment plans to satisfy two other debts, this progress is insufficient to carry the burden in light of the amount that remains outstanding and the recency of the payment plans.

Statement of the Case

On July 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. 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 Security Executive Agent Directive 4, effective June 8, 2017.

On August 17, 2017, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.j. He requested a hearing, whereupon the case was assigned to me on April 13, 2018. On June 19, 2018, the Defense Office of Hearings and Appeals

issued a notice of hearing, scheduling Applicant's case for July 16, 2018. The hearing was held as scheduled. I received five Government exhibits (GE 1 – GE 5) and seven Applicant exhibits (AE A - AE G). I also took administrative notice of the discovery letter that Department Counsel mailed to Applicant (Hearing Exhibit I). At the close of the hearing, I left the record open for Applicant to submit additional documents. Within the time allotted, he submitted three additional exhibits that I incorporated into the record as AE H through AE J. The transcript (Tr.) was received on July 24, 2018.

Findings of Fact

Applicant is a 49-year-old single man with one adult child. He was married from 1992 until his wife's death in December 2015. (Tr. 29) He has a high school education and has earned some college credits. He is a U.S. Navy veteran, serving from 1989 to his retirement in 2009. (Tr. 15) Since 2009, he has worked for a defense contractor in the field of data analysis. (Tr. 15)

Applicant has approximately \$28,000 of delinquent debts. Applicant's wife was responsible for managing the family's finances, and he was unaware until she died that she was opening cards in both of their names, and not paying the subsequent bills. Before her death, she had suffered from multiple chronic illnesses, including an opioid addiction. (Tr. 23) This strained their marriage. As her health declined and their marriage deteriorated, she became secretive about their financial affairs, only allowing him to see junk mail. (Tr. 29) In April 2015, Applicant moved into the in-law suite in their home. From that point to her death, they were constructively separated. Shortly after Applicant's wife passed away, he discovered the delinquent debts, as alleged in the SOR. (Tr. 29)

Subparagraph 1.b, totaling \$3,459, is a credit card account. This credit card was used to pay for their son's wedding in April 2014. Unbeknownst to Applicant, his wife had stopped making monthly payments. Applicant told the investigative agent, whom he met in April 2017, that he had made arrangements to begin satisfying the debt, and would have it paid off in two years. (AE 5 at 3) As of the hearing date, he had not yet made any payments. (Tr. 16)

Subparagraph 1.c is a credit card account with a \$2,947 balance. Applicant has not begun resolving this debt. (Tr. 19)

Subparagraph 1.d is a credit card account totalling \$7,609. In June 2018, Applicant arranged a payment plan for the debt to be satisfied in \$634 monthly payments. (AE E) The first payment was scheduled to be withdrawn on August 31, 2018.

Subparagraph 1.e is a credit card totaling \$7,141. Applicant has not begun satisfying this debt. Subparagraph 1.f is a credit card account totaling \$6,005. Applicant reached a payment agreement with the creditor on June 27, 2018. (AE C, AE D). Under the terms, he is to pay \$100 monthly for the next 24 months, with the first payment scheduled for early August 2018. (AE C)

Subparagraph 1.g, totaling \$920, is a credit card account for a hardware store. Applicant satisfied this delinquency. (AE F) Applicant also satisfied the credit card account alleged in subparagraph 1.h. (AE G)

Applicant has been unsuccessful in communicating with the creditors alleged in subparagraphs 1.i and 1.j. In particular, the creditor alleged in 1.j charged off the debt after Applicant's wife died, and refuses to talk with him. (Tr. 19)

The debt alleged in subparagraph 1.k is a credit card account totaling \$7,156. Applicant has not made payment arrangements. (Tr. 28)

Many of the creditors would not talk to Applicant about the credit card accounts until he provided a copy of his wife's death certificate. (Tr. 30) The coroner's office took five months to complete the death certificate.¹ (Tr. 39)

The month that Applicant's wife died, he began communicating with a foreign national through an online dating service. (GE 5 at 2; Tr. 45) Sight unseen, he gave her \$5,000 over the next 16 months. Ultimately, she broke off their online relationship, and reneged on her promise to immigrate to the United States to meet him.

Applicant had a \$30,000 life insurance policy on his wife. (Tr. 32) In May 2016, he cashed it in, using it to satisfy bills related to her cremation and to buy a new car. The vehicle was not a necessity. (Tr. 33) In June 2018, Applicant purchased a motorcycle for approximately \$24,000. (Tr. 39) He is financing it through a seven-year loan with monthly payments of \$586 per month.

Applicant maintains a budget. He has \$2,791 after his monthly bills are paid. His budget does not account for gas, food, or clothing. (AE H) Applicant has never received any professional financial counseling. (Tr. 46)

Applicant previously experienced financial problems in the late 1990s, compelling him to file for Chapter 13 bankruptcy protection, as alleged in subparagraph 1.a. (Tr. 29) He successfully made the payments, whereupon, the court discharged the debt in 2002. (Tr. 29)

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

¹ His wife's death was ultimately ruled a suicide.

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 national security eligibility 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. 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.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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).

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(d).²

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.

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 or sensitive information.

Although Applicant filed for Chapter 13 bankruptcy in the past, he made all of the payments, as ordered, and the petition was discharged nearly 20 years ago. I resolve subparagraph 1.a in Applicant's favor.

Applicant's remaining financial problems trigger the application of AG ¶ 19(a), "inability to satisfy debt," and AG ¶ 19(c), "a history of not meeting financial obligations." The following mitigating conditions are potentially applicable:

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, 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; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was unaware of his financial problems because his wife managed the finances throughout their marriage, and opened multiple credit accounts without his knowledge. Since her death, he has taken some steps to resolve his debts, reaching out to creditors, and satisfying two of the debts in their entirety. Conversely, since his wife's death, he purchased two vehicles that he did not need, using part of a \$30,000 insurance settlement to do so, and lavished \$5,000, sight unseen, on a woman with whom he became acquainted online. Such irresponsible spending undermines the probative value of the progress he has made toward resolving his debts, and casts doubt on his judgment, particularly given the recurrent nature of his financial problems. Under these circumstances, I conclude that only the first prong of AG ¶ 20(b) applies, with respect to the cause of the financial problems being beyond his control.

Applicant has received no professional financial counseling. He initiated payment plans to satisfy two of the debts, but the first payments were not scheduled to begin until after the hearing. Consequently, whether or not he will adhere to the plans is merely speculative. AG ¶ 20(c) is inapplicable, and AG ¶ 20(d) is only partially applicable.

Whole-Person Concept

The circumstances surrounding the incurrence of the delinquent debts was beyond Applicant's control. There is some presence of rehabilitation, as Applicant had paid two delinquencies, and developed payment plans to satisfy two of the debts. However, this progress is minimal compared to the recency that he negotiated the payment plans, the amount of the outstanding delinquencies, and his irresponsible spending since he discovered the delinquencies. I conclude that Applicant has 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.f:	Against Applicant
Subparagraphs 1.g – 1.h:	For Applicant
Subparagraphs 1.i – 1.k:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge