



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



In the matter of:

ISCR Case No. 17-02426

Applicant for Security Clearance

Appearances

For Government: Chris Morin, Department Counsel

For Applicant: *Pro se*

February 20, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 1, 2017, Applicant submitted Electronic Questionnaires for Investigation Processing (e-QIP). (Government Exhibit 3.) On July 21, 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. 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 on June 8, 2017.

Applicant answered the SOR on July 25, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 9, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, were

received by Applicant on September 7, 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. DOHA assigned the case to me on January 17, 2018. Items 1 through 5 are admitted into evidence, and hereinafter referenced as Government Exhibits 1 through 5.

Findings of Fact

Applicant is 31 years old. He has a bachelor's degree. He is employed by a defense contractor as an Application Engineer. He is seeking to obtain a security clearance in connection with his employment. He has been working for his current employer since April 2011.

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 alleges that Applicant failed to file his Federal income tax returns for tax years 2010 to at least 2014. It also indicates that Applicant has a number of delinquent debts and unpaid tax liens that remain outstanding. Applicant admits each of the allegations under this guideline. Credit Reports of the Applicant dated March 24, 2016; and February 1, 2017, confirm this indebtedness. (Government Exhibits 4 and 5.)

The following Federal income tax returns, delinquent debts, and tax liens remain owing:

1.a. Applicant failed to timely file his Federal income tax returns for tax years 2010 through at least 2014, as required by law. There is no evidence that they have been filed.

1.b. Applicant is indebted to a creditor for an account that was charged off in the amount of approximately \$14,900. The account remains owing.

1.c. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$9,417. The account remains owing.

1.d. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$150. The account remains owing.

1.e. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$140. The account remains owing.

1.f. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$124. The account remains owing.

1.g. Applicant is indebted to a creditor for an account that was place for collection in the approximate amount of \$77. The account remains owing.

1.h. Applicant is indebted to a state for a tax lien entered against him in December 2006 in the approximate amount of \$124. The account remains owing.

1.i. Applicant is indebted to a state for a tax lien entered against him in May 2006 in the approximate amount of \$124. The account remains owing.

1.j. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$129. The account remains owing.

Applicant has not provided any documentary proof that he has filed the Federal income tax returns in question, for tax years 2010 through 2014, or that he has even filed his most recent Federal income tax returns. Applicant has also failed to provide any evidence of payments, arrangements to pay, or resolution of the seven delinquent debts and two tax liens listed in the SOR. The record is void of any evidence of mitigation.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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. 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 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. Four are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to timely file his Federal income tax returns for tax years 2010 through 2014, as required by law. There is no evidence that Applicant has filed these tax returns or even timely contacted the IRS at the time he was required to file each return to exercise the option of filing for extensions. There is nothing in the record to show that he has brought his filings current. The failure to file tax returns suggests that Applicant has a problem complying with well-established governmental rules and systems. Tax liability was assessed against him. The evidence is sufficient to raise the above disqualifying conditions. In addition, Applicant is excessively indebted to the creditors listed in the SOR. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are potentially applicable under AG ¶ 20.

- (a) the behavior happened so long ago, was so infrequent or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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;
- (c) the individual has received or is receiving financial 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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant provided no information concerning his Federal income tax filings that demonstrate appropriate mitigation. There is no evidence of any sort to show that he has filed the Federal income tax returns in question. Additionally, in regard to the seven

delinquent debts and the two tax liens listed in the SOR, there has been no evidence, documentary or otherwise, provided to show that he has done anything to resolve them. There is no evidence that he has acted reasonably and responsibly. His actions demonstrate unreliability, untrustworthiness, and poor 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 the Financial Consideration concerns.

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.:	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

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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge