



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



In the matter of:)	
)	
)	ISCR Case No. 17-04163
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
 For Applicant: *Pro se*
 01/29/2019

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his continued eligibility for a security clearance. He failed to mitigate the concerns raised by his \$19,000 in unpaid federal taxes and \$3,300 in delinquent consumer debt. Clearance is denied.

Statement of the Case

On February 26, 2018, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended his case be submitted to an administrative judge for consideration.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on June 18, 2018. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on July 2, 2018, and did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 6.

Findings of Fact

Applicant, 45, has worked for his current employer, a federal contractor, since December 2003. He completed a security clearance, his first, in April 2017. The ensuing investigation revealed undisclosed federal income tax and delinquent consumer debts. The SOR alleges that Applicant owes \$19,000 in unpaid federal tax debt for the 2013 through 2016 tax years, and three delinquent accounts totaling \$3,300.³

Between 2009 and 2012, Applicant timely filed his federal income tax returns using the "head of household" filing status. In 2013, his wife started a small business. However, she did not pay income or self-employment taxes as she earned income. Sometime after starting the business, she experienced a health crisis that affected her ability to work. During her ailment, she hired employees to ensure the business remained a going concern. Although Applicant filed his 2013 through 2016 federal income tax returns on time, he could not afford to pay his federal tax obligations when they were due.⁴

According to the tax transcripts in the record, Applicant owes \$2,433 in federal income taxes for 2013, \$3,002 for 2014, \$8,887 for 2015, and \$3,844 for 2016. He established an installment agreement for the 2013 taxes in April 2014. He did not make any payments under the agreement and the IRS terminated it February 2015. He attempted to establish an installment agreement for the 2014 through 2016 income tax obligations in April 2017; however, the installment agreement was terminated that month. In March 2017, Applicant consulted a law firm specializing in tax issues to negotiate a settlement with the IRS on his behalf. He claims that the firm advised him to stop making payments on the tax debt until they reached a settlement. In his SOR answer, Applicant claims that as of March 2018, he established a payment plan with the IRS for \$300 each month. He provided evidence of the first two payments.⁵

Applicant admits he owes the three delinquent consumer accounts alleged in the SOR (¶ 1.e, \$2,255; ¶ 1.f, \$1008; and ¶ 1.g, \$32). He claims that he has entered into a payment plan for \$100 each month for SOR ¶ 1.e beginning in March 2018 and provided evidence of the first two payments. He also claims to have resolved the debt alleged in SOR ¶ 1.g, but did not provide proof of payment. The debt in SOR ¶ 1.f

² GE 1.

³ GE 3, 5 - 6.

⁴ GE 3 - 4.

⁵ GE 2, 4.

remains unresolved. The record does not contain information about Applicant's current household finances.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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.

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 security decision.

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

Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] 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 information."⁷

The SOR alleges that Applicant failed to pay his federal income taxes for 2013 through 2016, totaling \$19,000 and that he owes almost \$3,300 on three delinquent

⁶ GE 2.

⁷ AG ¶ 18.

consumer accounts. The record contains sufficient evidence to establish the Government's *prima facie* case that: Applicant has a history of not meeting his financial obligations, an inability to satisfy his debts, and that he has failed to timely pay annual federal income tax as required.⁸

Applicant failed to mitigate the alleged concerns. While his wife's medical issues may have caused some financial difficulty for Applicant, he has not established that he has acted responsibly in light of his circumstances. Although he has made several attempts over the years to resolve his federal tax debt, he has failed to establish a track record of repayment and reform. Overall Applicant's efforts to resolve his delinquent accounts are not enough to constitute a good-faith effort to repay his creditors. Ultimately, Applicant has failed to establish that his finances are under control.

Based on the record, doubts remain about Applicant's current suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns.⁹ An applicant is reasonably expected to provide corroborating documentation regarding his financial interests. Applicant failed to do so. As a result, he did not meet his burdens of production and persuasion to refute or mitigate the financial considerations allegations.

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, Financial Considerations:	AGANST APPLICANT
Subparagraphs 1.a – 1.g:	Against Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge

⁸ AG ¶¶ 19 (a), (c), and (f).

⁹ See Directive ¶ E3.1.15.