



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

In the matter of:)
)
) ISCR Case No. 18-01361
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*
05/01/2019

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant mitigated the financial considerations concerns raised by \$50,911 in delinquent debt incurred when he and his wife were underemployed between December 2017 and January 2018. Since returning to work, Applicant has paid almost \$12,000 toward the resolution of his delinquent accounts. Applicant’s request for access to classified information is granted.

Statement of the Case

On June 6, 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 that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to deny his security clearance.

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 timely answered the SOR and requested a hearing. At the hearing, convened on November 27, 2018, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through J, without objection. After the hearing, Applicant timely submitted AE K and L,² which are also admitted without objection.³ DOHA received the transcript (Tr.) on December 6, 2018.

Findings of Fact

Applicant, 44, has worked for his current employer, a federal contractor, since January 2018. He has held a security clearance, at varying levels of access, since 1996. He completed his most recent security clearance application in August 2017, while being sponsored by another company. The ensuing background investigation revealed several delinquent debts. The SOR alleges that Applicant owes \$50,911 in delinquent accounts, including a \$301,000 mortgage that was \$7,000 in arrears at the time the SOR was issued. Applicant's financial problems stem from his move to another city in 2015.⁴

Applicant worked as a civilian employee of the federal government from 2010 to 2016. His wife was also a civilian employee for the same agency, but in a different organization. In 2015, they had a household income of approximately \$200,000. In 2015, Applicant and his wife decided to relocate with their son from City 1 to City 2. They wanted their son to attend high school in a community better suited to his needs. They purchased a home in City 2 in December 2014 for approximately \$301,000. They maintained homes in both locations, until they sold the home in City 1 in December 2015. Applicant planned to transfer his position to a satellite office near City 2. Applicant's wife's position was not eligible for transfer, so she resigned from federal employment in July 2015. Appellant received approval to transfer to the satellite office in November 2015 and worked there for one year.⁵

Applicant's wife launched a business in 2015. It generated approximately \$20,000 in revenue in 2016. Applicant's estimates their household income for 2016 at \$120,000. When Applicant learned the satellite office was closing in December 2016, he was given the opportunity to move his position back to City 1. Instead, he chose to

² Upon reading the transcript in this case, I discovered that the email address Applicant provided for receipt of an electronic transcript was incorrectly transcribed. Concerned that he did not receive a copy of the transcript as required pursuant to Additional Procedural Guidance ¶ E3.1.24, I sent the parties an electronic copy of the transcript to their respective email addresses of record on April 5, 2019. I also reopened the record to allow Applicant to submit the items as requested in the transcript. In his conformation of receipt of the transcript, Applicant indicated he attempted to submit his post hearing submission to Department Counsel and me on December 4, and again on December 28, 2018. Neither Department counsel nor I received the emails, which were likely blocked by the security features of the DOHA email system. On April 9, 2019, Applicant provided a copy of his December 28, 2018 post-hearing submission email and the attached documents. (HE II.)

³ HE III.

⁴ Tr. 21, 86; GE 1 - 4.

⁵ Tr. 23, 51, 77 – 83.

resign from federal employment, citing the long commute, which was more than two hours each way. He was unable to find comparable employment in City 2. He worked temporary jobs as they became available and helped his wife with her business. He estimates their household income for 2017 at \$65,000, consisting of \$10,000 in income from the business and \$55,000 withdrawn from their retirement accounts. They also relied on credit cards to cover their living expenses. Their mortgage became delinquent and the mortgage holder initiated foreclosure proceedings. The nine credit cards alleged in the SOR (¶¶ 1.b through 1.j), also became delinquent during 2017.⁶

In January 2018, Applicant learned about a federal government facility in City 3, about 90 miles from his home. He secured a position earning \$87,000. As of the hearing, his wife's business generated approximately \$30,000 in revenue for 2018. She also returned to full-time employment in November 2018, earning \$20 per hour. Since January 2018, Applicant has paid the \$7,000 past-due balance on his mortgage (SOR ¶ 1.a) and the \$2,000 past-due amount on his car loan, which is not alleged in the SOR. Both accounts are current. He has also resolved the debt alleged at SOR ¶ 1.j (\$1,071). In February 2018, he established a payment plan for the debt alleged in SOR ¶ 1.d (\$7,649) for \$230 each month. He has paid \$2,300 toward this debt. In October 2018, he established a payment plan on the debt alleged in SOR ¶ 1.i (\$1,325) for \$55.23 per month and has reduced this debt by \$110. Applicant has also paid \$300 toward the debt alleged in SOR ¶ 1.h (\$2,087). The debts alleged in SOR ¶¶ 1.b, 1.c, 1.e, and 1.f, remain unresolved. Applicant contacted the creditor holding SOR ¶ 1.k (\$110), but the creditor did not have any record of the account.⁷

Before 2017, Applicant enjoyed a favorable financial history. He does not have a history of delinquent debt or financial problems.

Policies

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 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 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.

⁶ Tr. 23 – 26, 29 – 32.

⁷ Tr. 27, 34 – 44, 64; AE A – I.

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Failure to meet one’s 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.⁸ The SOR alleges that Applicant owed \$50,911 in delinquent debt. The record establishes the Government’s *prima facie* case that Applicant has a brief history of not paying his bills and that he had an inability to do so.⁹

Applicant’s financial problems were not caused by events beyond his control, but a series of personal choices that he and his wife made between 2014 and 2016. They decided to move to another city, which required his wife to resign from federal employment, reducing their household income by half. When the facility where Applicant worked closed in December 2016, he chose to resign from federal employment instead of maintaining his position with a long commute. He resigned without other employment and was underemployed for more than a year. However, since returning to full-time

⁸ AG ¶ 18.

⁹ AG ¶¶ 19(a) and (c).

employment in January 2018, Applicant has made a good-faith effort to repay his delinquent accounts.¹⁰ He has paid almost \$12,000 toward his delinquent accounts. This includes rehabilitating his mortgage (SOR ¶ 1.a) and a car loan and making payments on the credit card accounts alleged in SOR ¶¶ 1.d, 1.h, 1.i. Applicant made a good-faith, but unsuccessful effort to identify and resolve the account alleged in SOR ¶ 1.k. However, the \$111 medical debt is not material to a determination of Applicant's security worthiness.

Although, four of the SOR debts, ¶¶ 1.b, 1.c, 1.e. and 1.f, totaling \$28,965 remain unresolved, this is not dispositive of Applicant's security worthiness. The Appeal Board has held that, "an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.¹¹ Here, Applicant's actions thus far are enough to show a track record of debt repayment.

Based on a consideration of the record, I have no doubts about Applicant's ability to properly handle and safeguard classified information. In reaching this conclusion, I have also considered the whole-person factors detailed in AG ¶ 2(d). Applicant is a long-time clearance holder. He has a favorable financial history and his financial problems are limited to a period of one year when he and his wife were underemployed. He and has taken sufficient steps to rehabilitate his finances.

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:	FOR APPLICANT
Subparagraphs 1.a – 1k:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant's eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge

¹⁰ AG ¶ 20(d).

¹¹ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).