



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



In the matter of:)	
)	
)	ISCR Case No. 18-01722
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly Folks, Esq., Department Counsel
 For Applicant: *Pro se*
 09/09/2019

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 his history of financial problems, which includes outstanding federal income taxes and consumer debt. Applicant’s inability to resolve his delinquent accounts was caused by events beyond his control. He has acted responsibly in light of his circumstances and has made a good-faith effort to repay his creditors. Applicant’s request for access to classified information is granted.

Statement of the Case

On July 26, 2018, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. This action was taken 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. 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.

Applicant timely answered the SOR and requested a hearing. (Hearing Exhibit (HE) I) At the hearing, convened on May 1, 2019, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through G, without objection. After the hearing, Applicant timely submitted AE H through N, which are also admitted without objection. DOHA received the transcript (Tr.) on May 15, 2019. On August 16, 2019, I sent an email to the parties to confirm that the hearing record contained all evidence submitted at hearing and in post-hearing submissions. The parties certified that the evidentiary record was complete. The final exhibit list and the parties certification of its accuracy is appended to the record as HE V.

Findings of Fact

Applicant, 57, is currently being sponsored for access to classified information by two federal contracting companies seeking to hire him. Applicant served in the military from 1979 to 1999, when he retired as a master sergeant. He served as an Army Ranger, a Green Beret, a freefall instructor, and an instructor at the Joint Special Operations Command. After his retirement, Applicant worked as an employee of a federal contracting company where he was granted access to classified information by another government agency in 2000. He completed his most recent security clearance application in March 2016, disclosing outstanding federal income taxes and five delinquent accounts. The resulting SOR alleges that Applicant owes \$100,411 in outstanding federal income taxes and \$209,252 on three delinquent accounts. (Tr. 21-25, 37; GE 1, 2, 4-5; AE A, K.)

Between 2000 and 2009, Applicant lived and worked in State 1. He was financially secure. He lived within his means, earning sufficient money to support his family, accumulate retirement savings, and comfortably afford some luxury items. In April 2009, Applicant was laid off. Since then, he has had a sporadic employment history, experiencing unexpected job losses followed by periods of unemployment and underemployment. In May 2009, he accepted a long-term consulting job that required frequent cross-country travel between State 1 and State 2. Unable to sell their home in State 1 because of the depressed real estate market, Applicant rented out the home. From April 2009 to January 2010, Applicant, his wife, and daughter used their recreational vehicle (RV) as their primary residence and primary means of cross-country travel. However, in May 2010, Applicant's employer decided not to renew the contract. (Tr. 30-31, 41-42, 108-109; GE 1, 4-5; AE H.)

Applicant secured another job in June 2010, working on a five-year contract in the Middle East. The position paid \$250,000 annually, which Applicant accepted because he believed the earnings would ensure his family's financial security for the future. However, in December 2012, Applicant's employer abruptly cancelled the contract and Applicant returned to the United States. Applicant admits that he mishandled his federal income tax obligations by failing to properly withhold federal income taxes while he was working abroad, resulting in the tax liability alleged in SOR ¶ 1.a for the 2010 and 2011 tax years. (Tr. 31-32; GE 1; AE H.)

Applicant was unemployed for six months and used credit cards and his retirement savings to support his family. He found employment with a federal contracting company from July 2012 to October 2014. In the two years he held his position, Applicant attempted to rehabilitate his finances. In December 2012, he enrolled in a debt-relief program with the intention of resolving \$64,000 of credit card debt he incurred during his previous periods of unemployment. Applicant settled two credit card accounts through the program. He stopped participating in the program after he was laid off again in October 2014. (Tr. 32 -33; GE 1; AE H-I.)

Applicant was unemployed for six months. During this period of unemployment, Applicant's financial problems became acute. In 2015, still unable to sell their home in State 1, the bank foreclosed on the property. The mortgage lender cancelled the remaining debt. Without any income, Applicant realized he could not afford the payments on the RV. Although the account was current, Applicant proactively surrendered the vehicle to the creditor. According to Applicant, the creditor sold the vehicle at auction and forgave any deficiency balance. The credit reports in the record show that the creditor charged off the loan balance, \$176,062, in March 2015. Although the loan amount is alleged in SOR ¶ 1.e, the credit reports show the account as having no balance due. It does not appear that the account was purchased by or transferred to a collection agency. Nor does the record indicate that the creditor has made any efforts to collect any deficiency balance associated with the voluntary surrender. (Tr. 44-46; Ge 1, 4-5; AE L-M.)

In May 2015, Applicant began working on short-term contracts for a federal contracting company. The contracts lasted a few weeks or a few months, depending on the nature of the work. Although he was earning some income, it was not enough to support his family. This contracting arrangement continued until November 2018. Applicant stated at the hearing that between 2009 and 2015, he accumulated approximately \$50,000 in credit card debt, including the credit card debts alleged in SOR ¶¶ 1.c and 1.d. He also stated that he exhausted his \$250,000 in retirement savings, resulting in the 2015 income tax obligation alleged in SOR ¶ 1.b. However, he provided evidence of his efforts to resolve the alleged accounts. (Tr. 34, 44; GE 1; AE M.)

Applicant established an installment agreement with the IRS for the 2010 and 2011 tax liabilities in 2011. He made his first payment in November 2011 and has not missed a payment. In 2018, Applicant's CPA filed an amended income tax return for 2015, which resulted in an \$11,476 reduction in tax liability for that year. Applicant currently owes \$14,202 (including \$3,121 in penalties and interest) for the 2015 tax year, not \$27,329 as alleged in the SOR. Applicant's current installment agreement covers the 2010, 2011, and 2015 tax years. According to documentation from the IRS, Applicant made \$100 monthly payments between November 2011 and January 2017. The monthly payment amount increased to \$200 between February 2017 and June 2017. Since July 2017, Applicant has made monthly payments of \$291. He continued to make the agreed-upon payments during his periods of unemployment. To date, the IRS has applied these payments to the 2010 balance, which is \$45,888 including \$25,239 in

interest and penalties. Applicant's outstanding balance for the 2011 tax year is \$52,811, including \$18,226 in interest and penalties. (AE H, J, N.)

Applicant opened the credit card alleged in SOR ¶ 1.c in 1987. He attempted to resolve the debt through the debt-relief program, but the creditor declined to participate. The account remained open until July 2014, when the creditor closed the account and no longer accepted payments from Applicant. The account, which currently has a balance of \$4,406, remains unresolved. The creditor holding the account alleged in SOR ¶ 1.d cancelled the debt, forgiving \$26,315 in debt in 2015. Because he was insolvent, there was no tax liability associated with the canceled debt. (Tr. 46-48; AE H-I, M.)

Between December 2018 and April 2019, Applicant worked as a temporary employee for a small company. He has been unemployed since May 2019. His only source of income is his military retirement and disability pay, which is approximately \$2,000 each month. (Tr. 25, 34-35, 49, 73.)

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.

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. (AG ¶ 18) The SOR alleges that Applicant owes \$110,411 in outstanding federal income taxes and \$209,252 on other delinquent accounts. The record establishes the Government’s *prima facie* case that financial considerations AG ¶¶ 19(a), (c), and (f) apply. Applicant has demonstrated that he failed to pay his federal income taxes as required for 2010, 2011, and 2015. The alleged delinquent accounts also establish that Applicant has an inability to satisfy his debt and that he has a history of not meeting his financial obligations. However, he has presented sufficient evidence to mitigate the security concerns raised his history of financial problems.

Before 2009, Applicant enjoyed financial stability. He lived within his means and accumulated significant retirement savings. Applicant’s misunderstanding of his tax obligations as U.S. citizen working abroad, resulted in his 2010 and 2011 federal income tax liability. Applicant’s 2015 outstanding tax liability was not caused by irresponsible or reckless behavior, but penalties caused by withdrawals from his retirement savings, which provided the only source of income during a period of unemployment. However, he has been paying his tax liability through an installment agreement with the IRS for eight years. Financial Considerations Mitigating Condition ¶ AG 20(g) applies.

A series of employment actions beyond Applicant’s control caused him to lose financial stability, contributing to his financial difficulties and inability to pay his financial obligations. However, Applicant has demonstrated that he has acted responsibly given his circumstances and has demonstrated a good-faith effort to resolve his delinquent accounts. Applicant has continued to make payments under his IRS installment agreement despite periods of unemployment and underemployment. Between 2012 and 2014, he participated in a debt-relief program and resolved two non-SOR accounts. In 2015, he contacted his largest creditor and proactively surrendered the RV he could no

longer afford. There is no indication that he has an outstanding balance with the creditor as alleged in SOR ¶ 1.e. The creditor holding the debt in SOR ¶ 1.d cancelled the debt in 2015, which Applicant handled appropriately on his 2015 federal income tax returns. Financial Considerations Mitigating Conditions ¶¶ 20 (b) and (d), apply.

Despite his actions, Applicant still owes approximately \$110,000 in outstanding income taxes (SOR ¶¶ 1.a and 1.b), and \$4,400 credit card debt (1.c). However, this is not dispositive of his 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. (See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009.) Applicant’s actions show a track record of debt repayment and his commitment to repaying his creditors.

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). The purpose of a security clearance case is not aimed at collecting debts. Rather the purpose is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.” (AG ¶ 2(a)) Here, Applicant’s financial problems do not raise any behavior that indicates poor self-control, or an intentional unwillingness to follow rules and regulations that may hinder his ability to properly handle or safeguard classified information.

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 – 1e:	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