



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



In the matter of:)
)
) ISCR Case No. 18-02279
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*
08/28/2019

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant failed to mitigate security concerns related to his unresolved delinquent debts. Clearance is denied.

Statement of the Case

On February 15, 2019, 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.

Applicant answered the SOR and requested a decision without a hearing. (Government Exhibit (GE) 2.) The Government submitted its written case on April 19, 2019. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on April 25, 2019, and provided a

response. The attachments to the FORM are admitted to the record as GE 1 through 8, and Applicant's response to the FORM is admitted as Applicant's Exhibit (AE) A, without objection.

Findings of Fact

Applicant, 51, has worked for his employer, a federal contracting company, since June 1994. Applicant claims to have had a security clearance prior to the issuance of the SOR, but this information is not otherwise confirmed in the record. He completed a security clearance application in December 2016. He affirmatively answered the question about seeking credit counseling to resolve his debt, but he did not list any delinquent accounts. The ensuing investigation revealed that Applicant owes \$21,141 in delinquent accounts. (GE 3-8; AE A.)

The debts alleged in the SOR became delinquent between 2013 and 2017. Applicant, a father of four, blames his financial problems on the difficulty of raising four children. Two of the children lived with Applicant, and he paid \$701 in child support each month. However, he did not point to any specific event that caused him to incur the delinquent accounts. On his security clearance application, Applicant disclosed that he was working with Lexington Law to address his delinquent accounts. In his October 2017 subject interview, Applicant stated that he switched to another credit repair program, but admitted that he did not make any payments under either program. (GE 3-8.)

In his response to the FORM, Applicant indicated that his finances have continued to deteriorate. Applicant reported that his employer reduced his hourly wage by \$9 per hour and told him that he would be terminated if he was unable to retain his security clearance. In addition to his decrease in pay, Applicant and his wife of 10 years are in the process of divorcing. It is unclear how the dissolution of the marriage will affect his finances. (AE A.)

SOR admits the debts alleged in SOR ¶¶ 1.a, and 1.e – 1.i. He denied the debt in SOR ¶ 1.b claiming that he did not know the origin of the debt. He also denies the debts alleged in SOR ¶¶ 1.c and 1.d., which are duplicate accounts related to cable equipment. Applicant claims that he returned the boxes, and would resolve the issue with the cable company. However, he did not provide any corroborating documentation. To date, all of the SOR debts remain unresolved. (GE 2, 4.)

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. 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 access to classified information will be resolved in favor of 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.” (AG ¶ 18).

The SOR alleges that Applicant owes over \$21,000 in unresolved delinquent debts. Applicant’s admissions and the credit reports in the record support the Government’s *prima facie* case that Applicant has a history of not meeting his financial obligations and an inability to repay his creditors. Financial considerations disqualifying conditions 19(a) and (c) apply. Applicant failed to mitigate the financial concerns raised by his delinquent accounts. He failed to establish that his financial problems were caused by events beyond his control. His financial problems are ongoing and the debts remain unresolved. None of the financial considerations mitigating conditions apply.

Based on the record, doubts remain about Applicant’s suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant failed to meet his burdens of production and persuasion to refute or mitigate the financial considerations concerns raised in the SOR.

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: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.c, 1.e – 1.i: | Against Applicant |
| Subparagraph 1.d: | For 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