



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



In the matter of:)
)
) ISCR Case No. 19-00262
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
Allison Marie, Esq., Department Counsel

For Applicant: Alan V. Edmunds, Esq.

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to revoke his eligibility for a security clearance to work in the defense industry. Although Applicant has resolved three of the six debts alleged in the Statement of Reasons (SOR), he has failed to demonstrate a track record of debt repayment and that his finances are under control. Clearance is denied.

Statement of the Case

On February 15, 2019, the DOD issued an 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 continue 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 revoke his security clearance. Applicant timely answered the SOR and requested a decision on the written record. Department Counsel completed a File of Relevant Material on April 22, 2019. Applicant confirmed receipt of the document on May 8, 2019. Applicant retained counsel and requested that his case be converted to a hearing.

At the hearing, convened on January 9, 2020, I appended the Government's discovery letter to the record as Hearing Exhibit (HE) 1. I admitted Government's Exhibits (GE) 1 through 6, and Applicant's Exhibits (AE) A through I, without objection. After the hearing, Applicant timely submitted AE J through S, which are also admitted without objection. The final exhibit list, which is certified as accurate and complete by both parties, is appended to the record as HE II. DOHA received the transcript (Tr.) on January 17, 2020.

Findings of Fact

Applicant, 31, has worked as a security police officer for his current employer, a federal contractor, since April 2012. He has worked in the physical security field since 2009, when he was granted public trust eligibility. Applicant applied for his first security clearance in 2010. He was granted an interim clearance, but it was revoked because of his derogatory financial history. As a result, Applicant was unemployed from March 2011 until April 2012, when he was able to provide sufficient information to mitigate the concerns raised by his financial history. DOD granted Applicant access to classified information in April 2012. Applicant completed his most recent security clearance application in September 2015, seeking a higher level security clearance, which is required for another employment opportunity. He reported having delinquent student loan accounts. The ensuing background investigation revealed additional delinquent accounts, which form the basis of the SOR. The SOR alleged that Applicant owed over \$29,000 on six delinquent accounts. He admitted owing each of the six alleged accounts. (Tr. 16-17, 28-30, 42-43, 50-53; Answer; GE 1)

Applicant's financial problems began in his early 20s. Applicant attended college from 2006 to 2008. He withdrew from college, and began working full time to provide financial help to his mother as she raised Applicant's two younger sisters. On average, he gave his mother one-third of his paycheck to help her with household expenses. He also provided financial help to his grandmother, buying her groceries and prescription medication, as needed. Applicant used student loans to pay for college, which were serviced by multiple companies. He became overwhelmed by his financial commitments and allowed the loans to go into default. In 2015, Applicant rehabilitated the loans and consolidated them with one servicer. He kept the account current until December 2017, when he defaulted on the consolidated loan, which is alleged in SOR ¶ 1.a (\$19,696). (Tr. 21, 31-32, 53-56, 29; GE 1, 4-6)

When Applicant began working as a security guard in 2009, he commuted the 40 miles from his mother's home to his duty station. In 2013, Applicant moved to an apartment closer to his duty station. Applicant, then 25, believed he was renting an

apartment for \$1,100. When he arrived to sign the lease and move in, the rent was \$600 more than he expected. Believing he had no other options, Applicant went through with the transaction, knowing that the rent was beyond his means. He lived in the unit for less than six months before breaking the lease and defaulting on the remaining rent due. The balance on his lease is alleged in SOR ¶ 1.e (\$3,845). (Tr. 39-41, 50, 56, 60)

Between 2014 and 2017, Applicant went on six deployments to provide security at other sites. Because Applicant did not have a credit card, his lodging expenses were charged to his supervisor's credit card. Applicant's employer deposited Applicant's per diem allowance directly into his bank account. On one such deployment, the hotel would not allow Applicant's supervisor to pay the hotel charges over the phone. Instead, Applicant's employer deposited the money for the hotel costs into Applicant's checking account. Applicant testified that he became confused when the hotel payment, his per diem allowance, and paycheck were deposited into his account, causing him to overdraft the account by over \$4,000. The overdraft balance is alleged in SOR ¶ 1.b (\$4,422). (Tr. 18, 32, 45-46, 61-62)

Applicant attributed his financial problems, in part, to his deployments. During his deployments, which could last for months at a time, Applicant's mail would be delivered to his home and remain unopened until his return. As a result, Applicant missed due dates for his financial obligations, which caused his accounts to become delinquent. Applicant testified that he is now much better about managing his incoming mail. He has developed a system for dealing with his mail during any prolonged periods of absence. He also now organizes his mail by date and tries to open it timely to ensure he does not miss any due dates for his financial obligations. (Tr. 19-20)

The debts alleged in SOR ¶¶ 1.c (\$1,351), 1.d (\$180), and 1.f (\$409) are for credit cards. The debt alleged in SOR ¶ 1.c became delinquent in May 2017, and the debts alleged in SOR ¶¶ 1.d and 1.f became delinquent between July and August 2017. Applicant could not provide a reason as to why each account became delinquent other than that he became overwhelmed and neglected to pay the accounts. He believes he used the credit cards to pay for car repairs on his older model car. (GE 4-6)

SOR Debt Status

SOR 1.a: After defaulting on the consolidated student loan alleged in SOR ¶ 1.a, Applicant entered a loan rehabilitation program in January 2019. In January 2020, the creditor extended Applicant a settlement offer, agreeing to accept \$2,459.55 to satisfy over \$34,000 in student loan debt. He settled the account after the hearing. (Tr. 21, 23-24, 30; GE 4, AE D, J)

SOR 1.b: Applicant claims to have paid \$800 toward this debt, testifying that he made \$100 payments each month beginning in March 2019. However, the record does not contain evidence of these payments. In January 2020, Applicant made two payments toward this debt, totaling \$84. This account remains unresolved. He does not have payment plan established for this debt, but expressed his intent to continue making payments toward its resolution. (Tr. 24-25, 32-33; GE 5; AE E, K)

SOR 1.c: Applicant explained that he became overwhelmed with his bills and stopped making payments on this account. Between March and July 2019, Applicant paid \$675.50 on this account. He received a settlement offer in November 2019 to satisfy the account for a lump sum payment of \$202.64. The offer expired on December 31, 2019. When asked at hearing why he failed to resolve the account by the deadline, Applicant explained that he did not open the mail containing the offer until late December. He offered no explanation for his failure to open the letter, which he received before Thanksgiving, or his failure to pay the settlement amount by the December 31 deadline. Applicant settled the account after the hearing. (Tr. 25-26, 35-37, 63-66; GE 5-6; AE F, L)

SOR 1.d: In his answer to the SOR, Applicant stated that he was making \$50 monthly payments toward this account. However, he did not provide evidence of those payments. At the hearing, he provided a receipt showing an account balance of \$1,066 after a payment of \$25 made on the day of the hearing. After the hearing, Applicant submitted a second receipt, but the receipt does not contain any detailed payment information or provide an updated account balance. Applicant has not established a payment plan for this account, and it remains unresolved. (Tr. 26, 37-38; GE 5-6; AE G, M)

SOR 1.e: This debt is the balance on the 2013 apartment lease. Between 2014 and May 2017, Applicant made monthly payments on this account, totaling \$4,000. He did not make any payments on the account after May 2017. In January 2020, he made two payments, totaling \$130. This account remains unresolved. (Tr. 27, 14; GE 3; AE H, N)

SOR 1.f: There is no evidence that Applicant made any payment on the account after it became delinquent in August 2018. Applicant settled this account before the hearing. (Tr. 27, 41-42; GE 5-6; AE I, O)

Applicant earns approximately \$70,000 annually, including regular and overtime pay. He has over \$5,000 in retirement savings, consisting entirely of the contributions made by his employer. Applicant is single and has no children. He no longer provides regular financial support to his mother, but will give her money if she asks. Between 2016 and 2017, Applicant worked with a credit counseling agency, paying them \$100 each month, to verify and challenge entries on his credit record. Applicant also provided evidence that he enrolled in three financial/debt counseling programs. He submitted a budget showing that he intends to make \$100 monthly payments toward the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e. (Tr. 16-20, 35, 44, 63, 66, 71, 83, 85-86, 88; AE P-S)

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

Guideline F, Financial Considerations

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 record establishes the Government's *prima*

facie case that Applicant owed over \$29,000 in delinquent debt. The credit reports in the record as well as Applicant's admissions establish that Applicant has demonstrated a history of not paying his financial obligations. Financial considerations disqualifying condition AG ¶ 19(c) applies.

Applicant receives credit for resolving the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.f. However, this is not enough to mitigate the security concerns raised by his history of financial problems. While Applicant's youth and inexperience may have accounted for the financial problems at the beginning of his career, his current financial problems are plagued by lack of attention to detail, more than an inability to pay. Applicant did not establish that his finances are under control. He did not present sufficient information to support a finding that he is unlikely to incur delinquent debt in the future. His actions after the hearing, resolving three of the alleged delinquent accounts and his promise to pay the remaining three in the future do not constitute a good-faith effort to repay his creditors. Although Applicant has enrolled in three different financial counseling programs, he failed to demonstrate any change in the financial habits that caused him to accumulate delinquent accounts over the past decade. Accordingly, 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 has failed to mitigate the concerns raised by his history of financial problems. Although Applicant settled three of the six alleged accounts after the hearing, the resolution of specific financial obligations is not the point of this examination. Security clearance adjudications are not debt collection exercises. The purpose is to determine if an Applicant's overall financial history presents a security risk. As a young adult, Applicant took on significant financial responsibility to help support his family, and in doing so, made some poor financial decisions. However, he has been aware since he first applied for access to classified information in 2010, that government views delinquent debt as a security concern. Since then, Applicant has not demonstrated financial rehabilitation or reform. He continued to accumulate delinquent debt after completing his security clearance application in 2015. While Applicant stated his intent to resolve his remaining delinquent accounts, he did not present a plan for doing so.

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, and .1.f:	For Applicant
Subparagraphs 1.b, 1.d, and 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant's continued eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge