



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01349
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Brett O'Brien, Esq
10/26/202

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. The alleged SOR debts are not the product of irresponsible financial behavior, but a failed business venture by Applicant's wife. Neither the origination of these debts nor Applicant's efforts to resolve them make him vulnerable to coercion or exploitation. Furthermore, these debts do not otherwise raise doubts about his ongoing security worthiness. Clearance is granted.

Statement of the Case

On August 28, 2020, the DOD issued an SOR detailing security concerns under the financial considerations and personal conduct guidelines. 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 hearing.

At the hearing, convened June 9, 2021, I appended to the record as Hearing Exhibits (HE) I and II, respectively, the Case Management Order (CMO) issued in this case on May 6, 2021, and the Government's discovery letter, dated January 30, 2021. I admitted Government's Exhibits (GE) 1 through 4, and Applicant's Exhibits (AE) A through S, and U through V, without objection. After the hearing, Applicant timely submitted AE W through AA. These documents are also admitted without objection. (HE III, dated June 23, 2021) DOHA received the transcript (Tr.) on June 24, 2021.

Procedural Matters

SOR Amendment

At the hearing, Department Counsel moved to strike the personal conduct allegations from the SOR. I granted the motion without objection from Applicant. (Tr. 11-12).

Evidentiary Matters

Department Counsel objected to the admission of AE T as irrelevant. (Tr. 28-29; HE III) The exhibit is a series of documents related to a number of state and federal court cases against Applicant's sister-in-law related to her failure to pay state and federal income taxes. The documents are public records and are admitted for the limited purpose of substantiating Applicant's claims that his sister-in-law acted in bad-faith when engaged in a business venture with his wife. Department Counsel's objection is overruled.

Findings of Fact

Applicant, 49, has worked for a federal contracting company since November 2019. He was initially granted access to classified information in 1991, in connection with his military service, and was granted special program access in approximately 2004. Applicant completed his most recent security clearance application in August 2019. He did not disclose any derogatory information. The background investigation developed information that Applicant owed over \$63,000 on four charged-off auto loans, which are alleged in the SOR as ¶¶ 1.a through 1.d. (Tr. 116, 122; GE 1, GE 2)

Applicant served on active duty in the U.S. Army from 1991 to 2017, when he retired as an E-7. Between 1999 and 2017, he served as the crew chief of a special operations aviation regiment. Due to the nature of his job, Applicant was on a continuous alert cycle or continuous rotation cycle for 16 years. He spent approximately 280 days, or 78% of each year on deployments. According to Applicant, his successful Army career would not have been possible without his wife of 23 years, who took care of their home and family. She was responsible for their family finances, including the household budget and filing of their tax returns. She also held a power of attorney empowering her to act on Applicant's behalf. During his brief time at home, Applicant focused on spending time with the couple's daughter, and not the family's financial issues. Applicant explained that he trusted his wife implicitly to handle their affairs. (Tr. 116-127; GE 1)

In April 2012, Applicant's wife and her sister decided to open a commercial cleaning business. Applicant's sister-in-law is eight years older than his wife. She viewed her sister as another mother figure and trusted her. Between Applicant's wife's employment in commercial real estate property management and her sister's experience operating a small business, Applicant's wife believed they could run a successful business. Applicant's sister-in-law was responsible for the business operations and accounting. Applicant's wife assumed the role of financing the business, and invested the salary from her full-time job as a commercial property manager into the company. She also personally purchased three vehicles and transferred one of the couple's personal vehicles to the business to provide transportation to staff. (SOR ¶¶ 1.a – 1.d) The bank originated the vehicle loans with Applicant and his wife as co-debtors; however, Applicant's wife testified that Applicant did not sign any of the loan origination documents. Applicant recalls that his wife discussed the business idea with him. He did not have anything to do with the business operations and was deployed while the business was in operation. (Tr. 38-40, 45, 48, 77, 87-89, 107-110,127; AE J-M, P)

In April 2013, Applicant's wife learned that her sister failed to pay the state business taxes. She then began to suspect that her sister was not properly managing the business. Shortly, thereafter, Applicant's wife learned that her sister was taking money from the business. Applicant's wife asked her sister if she could review the business's accounting records. Her sister objected. The two women argued, resulting in her sister abandoning the enterprise. In retaliation, Applicant's sister-in-law made a complaint to Applicant's wife's employer, a commercial property management company, resulting in her termination. Applicant's wife has been unemployed since then. Despite her efforts to keep the business going, the business ceased operations in 2014. Applicant learned of the business failure and his wife's problems with her sister during one of his stints at home. He inquired as to whether she required his help to resolve any lingering issues related to the business. After assuring him that she did not require his help, Applicant did not intervene further into the matter. (Tr. 45-46, 48, 78-81, 109, 127-128; AE N-O, Q-R)

Applicant continued his rigorous deployment schedule, assuming that his wife resolved all the issues related to the failed business. It was not until 2015, during a background interview he completed in connection with a periodic reinvestigation, did he learn otherwise. After the interview, he confronted his wife about the accounts. She assured him that she was working to resolve the issues. Applicant authorized his wife to use \$7,000 from his thrift savings plan to resolve the business debts. He deployed again, believing that his wife had the issue under control. Applicant began his current job in November 2019, supporting his former military unit. When he completed his most recent security clearance application in August 2019, he was under the impression that he wife was making payments on the auto loans. He continued to hold that belief when he completed his November 2020 answer to the SOR. (Tr. 41, 130, 139-141, 143; GE 2; AE S)

At the hearing, Applicant's wife explained that she paid the accounts sporadically between 2013 and April 2018, when she stopped making payments altogether because of their limited income. Between 2017 and 2019, both Applicant and his wife were unemployed. The family lived off of Applicant's retirement pay and disability benefits. In

2018, Applicant, his wife, and daughter were diagnosed with a medical condition that requires ongoing treatments that costs \$7,500 each month. They pay the costs upfront and are reimbursed by their insurance provider within 60 to 90 days of their filing a claim. She also explained that the ability to repay the loans was also affected by the transitional nature of their lives between 2017 and 2019. The couple did not have a permanent home, living with different family members over the course of those two years as they tried to find a home. The couple lived with Applicant's wife's brother from 2018 to 2019, when he died by suicide in a fire that consumed his home, which also contained some of Applicant's family's possessions and personal documents. (Tr. 55-59, 60, 62, 110, 112-113, 147, 167, 169; AE S, Y-Z)

In late 2019, Applicant's wife contacted the original creditor servicing the four auto loans to resume payments, but learned the debt had been sold to a collection agency. In 2019, she received a settlement offer from the collection agency, but that agency sold the debt to another company before she could start making payments. In March 2021, the new creditor contacted Applicant's wife. They negotiated a settlement amount and established a payment plan of \$800 each month to begin in April 2021. After making two payments, the creditor sold the account to the current collection agency. Applicant's wife continued to make payments to the current creditor under the terms she negotiated with the previous collection agency. The current creditor did not immediately acknowledge the agreement, but accepted the payments. In June 2021, the current creditor agreed to settle the accounts for \$39,581. Under the terms of the agreement, Applicant must make two payments, an initial payment of \$800 and another lump sum payment of \$37,181. The couple plans to take advantage of the offer, using proceeds from the reimbursements of their medical expenses and federal income tax refunds, and if necessary their \$10,000 savings. (Tr.60, 63-65, 67-71, 99-106,143; AE C, V-U, X)

Applicant's wife still maintains primary responsibilities for managing the couple's finances. However, the couple operates in a more collaborative manner. They completed a financial counseling class through their church and have developed a household budget. The couple is financially stable. They have established a permanent residence and purchased a home in which they have approximately \$63,000 in equity to use toward the resolution of their debt. Applicant currently earns \$110,000 annually in addition to his \$12,000 in combined retirement and disability income. The couple lives within their means and does not have a history of other financial problems. Aside from the four auto accounts, the couple does not have any other delinquent accounts. Applicant has a favorable credit history with all but the four accounts alleged in the SOR being reported as "pays as agreed." (Tr. 132, 136, 153, 173; GE 3- GE 4; AE C, F)

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). Here, the SOR alleges with four delinquent automobile loan accounts, totaling \$63,146, as a co-debtor with his wife. The Government has established its *prima facie* case, and the following financial considerations disqualifying condition applies:

AG ¶ 19(a) inability to satisfy debts.

Outside of these four business-related debts, Applicant does not have a history of financial problems. The origination of these business debts are not indicative of irresponsible or reckless financial behavior. Nor do these loans indicate any behavior that calls into question Applicant's ability to handle or protect classified information. The debts in this case arise from Applicant's wife, who acting in good-faith, entered into an ill-fated business partnership with a close family member who proved dishonest. Upon learning of the delinquent debts in 2015, Applicant attempted to resolve the debts by giving his wife permission to use his retirement savings to resolve them. He credibly believed that his wife continued to work towards the resolution of these debts, which she did until the couple's finances, strained by two years of unemployment, limited income, and recurring medical expenses, prevented her from doing so. However, since Applicant returned to full-time employment, they have taken steps to resolve the delinquent accounts, following the accounts from creditor to creditor to negotiate a payment arrangement. In an effort to improve their financial habits, the couple also completed a financial counseling class. Aside from these four accounts, Applicant's finances appear to be under their control. Based on the record, the following mitigating conditions apply:

AG ¶ 20(a) the behavior ...occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practice, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problems from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG 20 (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Based on the record, no 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). The fact that the four accounts were not resolved by the time the record closed in this case is not outcome determinative. It is not the purpose of these proceedings to collect debts, or punish an individual for their past decision. Furthermore, Applicants are not held to a standard of perfection. Applicant has demonstrated a 30-year history of handling classified information without incident. The origination of the debts is not the result of any misconduct. Under these circumstances, neither Applicant's continued trust in his wife's abilities to manage the financial aspect of their relationship, nor his failure to take a more proactive role in his family finances constitutes the type of

bad judgment, reckless, or irresponsible behavior that reflects negatively on his ongoing security worthiness. Furthermore, the alleged debts or the circumstances of their origin do not make the subject vulnerable to blackmail, coercion, or exploitation.

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 – 1.d:	For Applicant
Paragraph 2, Personal Conduct:	WITHDRAWN

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 continued eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge