



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



In the matter of:)	
)	
)	ISCR Case No. 19-02830
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: John V. Berry, Esq.

01/25/2021
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. Although Applicant has made some strides toward resolving the issues raised in the SOR, he has failed to demonstrate a track record of debt repayment and financial reform. Clearance is denied.

Statement of the Case

On November 12, 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 hearing.

At the hearing, convened on September 23, 2020, I appended to the record as Hearing Exhibits (HE) I and II, the Case Management Order I issued in this case on September 1, 2020, and the Government's discovery letter, dated January 31, 2020. I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A through M, without objection. After the hearing, Applicant timely submitted AE N through V by the October 30, 2020 deadline. These documents are also admitted without objection. (HE III) The final exhibit list, which is certified as accurate and complete by both parties, is appended to the record as HE IV. DOHA received the transcript (Tr.) on October 19, 2020.

Findings of Fact

Applicant, 50, has worked for his current employer as an information technology expert since 2018, supporting the intelligence community. He completed a security clearance application in March 2018, in anticipation of employment in a federal agency. Applicant disclosed derogatory financial information on the application, including: his failure to file his federal income tax returns since 2014; two delinquent student loan accounts; four delinquent credit card accounts; and, and a delinquent mortgage. The background investigation confirmed Applicant's financial problems. The SOR alleges that Applicant failed to file his federal income tax returns from 2014 to 2018 (SOR ¶ 1.a), that he lost a home to foreclosure in 2019 (SOR ¶ 1.b), and that he owes over \$101,000 on 14 delinquent accounts. (SOR ¶¶ 1.c – 1.s). (GE 1, 5; Tr. 24-25, 56 100)

Applicant has worked in the information technology field since 2011. Between 2011 and 2018, Applicant lived in a low-cost-of-living state, earning between \$130,000 and \$160,000, depending on the bonuses he earned during the year. In the fall of 2014, Applicant decided to switch from an engineering role to a sales role, hoping to increase his earning potential through sales commissions. In doing so, Applicant accepted a \$30,000 reduction in his base pay. Despite the pay cut, Applicant was able to purchase a home in late 2014. Although Applicant admits he was overextended at times, he believed he could comfortably afford his home and two luxury vehicles. (Tr. 28-29, 93-96)

Applicant considered himself financially stable in 2015, but admitted that the deaths of his father and stepfather at the end of 2014 left him out of sorts, and he failed to file his 2014 federal income tax returns. By the summer of 2015, Applicant returned to his engineering position and his higher salary. In late 2015, Applicant decided to move to another city within the state and rented his home to an acquaintance from his church for a one-year lease period. Applicant returned to his home city in November 2015 and rented an apartment for an 18-month lease term. Unbeknownst to Applicant, his renter abandoned the property in September. Applicant did not learn that the property was empty until November 2015. He could not afford to break his recently-signed lease. The company Applicant retained to manage the property could not find another renter because the property was in disrepair. Applicant retained a realtor to sell the home, but he could not afford the repairs required to prepare the home for sale. As a result, Applicant began to pay both the mortgage on his home and the rent on the apartment. In addition to his other bills, he also supported his girlfriend, who was unemployed. He

paid both obligations through May 2017, when he stopped paying the mortgage. However, he continued to pay the homeowners' association fees and other expenses required to maintain the home, which amounted to approximately \$300 per month. Between 2016 and 2017, the accounts alleged in SOR ¶¶ 1.d, 1.f, 1.g, 1.h, 1.j., 1.l, and 1.n, totaling approximately \$29,820 became delinquent. (Answer; GE 2, 4-5; Tr. 28-29, 32-34, 96-99, 102-113)

In January 2018, Applicant moved from State 1 to State 2. In April 2018, Applicant resigned his position after accepting a position with a federal agency. However, the agency rescinded the offer after Applicant was unable to obtain an interim security clearance. He remained unemployed until September 2018. During this period of unemployment, the creditor repossessed the vehicle alleged in SOR ¶ 1.c, resulting in a \$48,764 deficiency balance. The debts alleged in SOR ¶¶ 1.e, 1.i, 1.k, 1.r, and 1.s totaling \$18,993, also became delinquent. (GE 2 -Tr. 55-56,100)

Applicant began his current position in October 2018, earning \$165,000. Once he started working, Applicant began providing \$1,000 in financial support to his mother each month. He also hired an accountant to help him resolve his outstanding federal income tax returns. Between February and August 2020, Applicant filed his 2014 through 2019 income tax returns. After filing the outstanding returns, Applicant owed over \$22,117 in federal taxes for the 2014, 2016, 2017, and 2018 tax years. The IRS applied overpayments from tax years 2015 (\$1,736) and 2019 (\$9,810) to the balance, satisfying the amounts due for the 2014 and 2016 tax years. Applicant currently owes over \$9,200 for the 2017 (\$1,688) and 2018 (\$7,609) tax years. At the time of the hearing, Applicant had not received an installment agreement from the IRS. In absence of an installment agreement, Applicant testified that he set up automated payment to the IRS on the 16th of each month. However, the documentation he provided only shows three payments in April, June, and July 2020, totaling \$700. (GE 5; AE C-H, N, P Tr.30-32, 5, 88, 101-102, 115-119)

To date, Applicant has resolved 5 of the 14 debts alleged in the SOR: ¶¶ 1.j (1.q is a duplicate of this account and is resolved in Applicant's favor), 1.k, 1.l, 1.n, and 1.r, totaling \$3,904. The bank was able to sell the foreclosed home alleged in SOR ¶ 1.b for more than the amount owed on the loan. The remaining outstanding debt totals \$93,242 (SOR ¶ 1.c – 1.i, and 1.s). Applicant testified that he had been in contact with each of his creditors and had negotiated settlements on each of the remaining accounts, reducing the total amount owed to \$42,892, which he plans to resolve by March 2021. However, Applicant only provided corroborating evidence of two of the settlement offers. The settlement offer for the debt alleged in SOR ¶ 1.c, agreeing to accept \$17,067 of the \$48,764 owed, expired in November 2019. The offer for the debt alleged in SOR ¶ 1.i, agreeing to accept \$1,225 of the \$2,443 balance due, expired in May 2020. (Answer; AE N, Q-R; Tr. 34-35, 39 – 46, 50, 67-84)

Applicant believes that he currently lives within his means. He earns \$205,000 per year, which includes commissions. He has approximately \$2,400 in disposable income each month. He has reduced the amount of financial support he provides to his mother because his brother has assumed primary responsibility for their mother's care.

He has not accumulated any new delinquent accounts since he returned to work in October 2018. Applicant admits that his student loan accounts have historically been in delinquent status, but are currently in forbearance. At the hearing, Applicant took responsibility for his financial history and credibly testified about his willingness and intent to repay his creditors. He hopes to resume his teaching position supervising post-graduate students in 2021. He plans to apply the \$25,000 in income toward his delinquent debt. (GE 5; AE N; Tr. 36, 38-39, 48-50, 55, 59-63, 84-88, 114-122)

Applicant participates in service projects through his fraternity, as well as a university and a non-profit organization dedicated to providing services in his hometown. Applicant's character witnesses, two of whom are long-time clearance holders, describe Applicant as a good person, who is a conscientious rule follower. Each witness was aware of Applicant's financial problems and none have observed Applicant living extravagantly or above his means. All recommend him for access to classified information. (AE K, S-U; Tr. 16-23, 123-131)

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. The following financial considerations disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ 19(f) failure to file or fraudulently file annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The record contains some mitigating evidence. Applicant did not incur delinquent debt under circumstances that indicate reckless or irresponsible spending. He incurred delinquent debt during two periods of financial difficulty caused by events beyond his control. In the fall of 2015, Applicant faced a difficult financial situation after the person renting his home damaged, then abandoned the property. The choices Applicant faced – defaulting on his apartment lease or defaulting on his home mortgage, came with serious financial consequences. In an effort to honor his financial obligations, Applicant paid both obligations for over a year. However, doing so was unsustainable and caused him to incur significant delinquent debt. He incurred additional delinquent debt during a six-month period of unemployment in 2018.

Since returning to work, Applicant has paid over \$3,900 toward his delinquent accounts. He has also filed his outstanding federal income tax returns and paid \$700 toward his outstanding federal tax liability as he awaits an installment agreement from the IRS. He timely filed his 2019 federal income tax return. The following financial considerations mitigating conditions partially apply:

AG ¶ 20(b) the conditions that resulted in the financial problem 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 practices, or identity theft), and the individual acted responsibly under the circumstances;

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

AG¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

However, Applicant's actions, while evidence of his willingness to pay his debts, his actions have not established the track record of debt repayment or financial rehabilitation necessary to fully mitigate the alleged financial considers. His intention to resolve his remaining outstanding debt and tax liability by March 2021, is a well-meaning promise to pay his delinquent debts, which does not mitigate the security concern.

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). When considered together Applicant's efforts to resolve his delinquent debts and the favorable character evidence in the record is not enough to overcome the security concerns raised by his recent history of financial problems and the lack of evidence establishing a record of financial rehabilitation and reform.

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.b, 1.j – 1.l, 1.n, 1.q, and 1.r:	For Applicant
Subparagraphs 1.a, 1.c-1.i, 1.m, 1.r – 1.s:	Against Applicant
Subparagraphs 1.o and 1.p:	Omitted

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