



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



In the matter of:)
)
) ISCR Case No. 20-01485
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*
11/17/2022

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’s financial problems are not indicative of behavior that raises a security concern. His finances are currently under control and do not present a security risk. Clearance is granted.

Statement of the Case

On November 23, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) 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.

DCSA 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 on April 27, 2022, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter the Government sent to Applicant, dated June 27, 2019; and HE II, Department Counsel's email indicating no objection to Applicant's post-hearing submissions. I admitted Government's Exhibits (GE) 1 through 6, and Applicant's Exhibits (AE) A and B, without objection. After the hearing, Applicant timely submitted two documents, which are also admitted without objection from Department Counsel:

AE C: IRS Record of Account, for tax period December 31, 2021, (7 pages); and,

AE D: Capital One Account Detail, April 14, 2021 to October 16, 2021, (7 pages).

DOHA received the transcript on May 5, 2022.

Findings of Fact

Applicant, 53, has worked for a federal contracting company as a program manager since August 2021. He completed a security clearance application on June 27, 2019, while employed by another federal contracting company. He did not disclose any derogatory information on the application. The ensuing investigation revealed two delinquent accounts totaling \$28,152, which are the two SOR allegations. (Tr. 17-19, 31; GE 5)

In 2009, Applicant's wife became ill and was unable to work for one-and-a-half years. Their household income decreased from \$90,000 to \$56,000. Also, between 2011 and 2019, Applicant lived and worked apart from his wife and children outside the United States, earning \$40,000 annually. Over the course of the eight-year period, Applicant provided financial support to his family of four in the United States and paid for his living expenses abroad, which included caring for his elderly mother who lived with him. Applicant used the two credit cards alleged in the SOR to make ends meet. He stopped paying the credit cards after the interest rates increased. When the payments became unaffordable, he allowed the accounts to become delinquent. (Tr. 20-22, 27-30)

In 2021, Applicant contacted his creditors. He set up a payment plan for the debt alleged in SOR ¶ 1.a, for \$200 per month to begin in April 2021, and ending in February 2022. The creditor automatically withdrew the payments from his bank account between April 2021 and October 2021. When he followed up with the creditor as to why the automatic withdrawal stopped, the creditor informed him that they could not find his account and could no longer accept payments from him. (Tr. 23-25, 34-37; AE A, D)

Applicant also contacted the creditor alleged in SOR ¶ 1.b., but could not afford the terms of the repayment options presented to him. In 2021, the creditor cancelled the \$12,966 debt, issuing Applicant an IRS Form 1099-C. (Tr. 23, 25, 37-38; AE B-C)

Applicant's wife is currently working. Their household income is approximately \$186,000. The couple has over \$500,000 in assets, including their home, cash savings, and retirement accounts. Applicant is financially stable and lives within his means. He is able to pay his oldest daughter's college tuition and living expenses without incurring debt. After paying the household's recurring bills, he has \$2,000 in disposable income. The most recent credit report in the record dated April 2022 shows no delinquent accounts. Each of the 21 reported accounts is in good standing. (Tr. 34-34, 39-40; GE 2)

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

The SOR alleges disqualifying conduct under the financial considerations guideline. Applicant’s admissions as well as the documents in the record support the Government’s *prima facie* case.

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). Applicant admits to owing \$28,152 on two delinquent debts. The record supports the application of the following financial considerations disqualifying conditions:

AG ¶ 19(a) inability to satisfy debts; and

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

The record also supports the application of the following mitigating conditions:

AG ¶ 20(a) the behavior happened so long ago, was infrequent or 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; and

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

Applicant did not incur the delinquent debts under circumstances that indicate irresponsible or reckless financial behavior. After the issuance of the SOR, Applicant made seven payments, totaling \$1,400, toward the debt alleged in SOR ¶ 1.a. The creditor has cancelled the debt alleged in SOR ¶ 1.b.

Based on the record, I have no doubts regarding Applicant’s suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt collection proceedings. Rather the purpose of the adjudication 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. A fair and commonsense assessment of the record evidence as a

whole supports a conclusion that the security concerns raised under the financial considerations guideline are mitigated.

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.b:	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