



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



In the matter of:)	
)	
)	ISCR Case No. 21-01685
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2022

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant’s 2008 bankruptcy and a single medical debt incurred after a 2013 accident do not indicate a pattern of financial issues. The SOR does not otherwise contain sufficient evidence of any current or ongoing financial problems that adversely affect Applicant’s security worthiness. Clearance is granted.

Statement of the Case

On September 3, 2021, 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, 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) 1. The Government submitted its written case on June 9, 2022. The Government provided Applicant a complete copy of the file of relevant material (FORM) and the Directive. He acknowledged receipt of the documents on June 21, 2022, and did not respond. The attachments to the FORM are admitted to the record as GEs 1 through 5.

Findings of Fact

Applicant, 45, has worked for a federal contracting company as an operations supervisor at a shipyard since March 2017. He completed a security clearance application, his first, in December 2019. He disclosed derogatory information regarding a 2010 DUI. The ensuing investigation developed further information about the DUI as well as some derogatory financial information. The SOR alleges that Applicant owes \$31,043 on a delinquent medical account. The SOR also alleges that he filed for, and received relief from, \$332,808 in debt through Chapter 7 bankruptcy in August 2008.

The record contains very little information about the 2008 bankruptcy. Given that the bankruptcy occurred eleven years before he completed the security clearance application, Applicant was not required to disclose it and the investigator did not ask about it during Applicant's February 2020 background interview. The only available information is from the May 2008 bankruptcy application. According to the bankruptcy application, Applicant sought relief from \$332,808 in debt. The largest debt, 86% of the reported debt, was for a \$289,310 mortgage opened in December 2006.

Applicant incurred the \$31,043 medical debt after an accident in November 2013, which required him to be airlifted to a hospital. At the time of the accident, Applicant did not have insurance. According to his background interview, Applicant did not learn about the debt until 2018. He began making \$100 monthly payments. He claimed he stopped making payments when the interest and penalties on the debt exceeded the \$100 payment. He tried to negotiate a settlement with the company to no avail.

Aside from the alleged medical debt, Applicant's January 2020 credit report shows a favorable credit history. Applicant obtained a mortgage loan in 2012 and the account is in good standing. He has no other consumer credit accounts in his name. He is the authorized user on three credit cards, which are also in good standing.

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 AG ¶ 2 describing 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 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.

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 clearance 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

An individual's finances become a concern when their failure to meet their financial obligations is a possible indication of 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. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18)

The record establishes that, in 2008, Applicant benefited from bankruptcy protection and that, in 2013, he incurred a medical debt that remains unpaid. Financial consideration disqualifying condition AG ¶ 19(a), “an inability to satisfy debts,” applies. The record does not contain enough information to apply any of the other disqualifying conditions.

Because the circumstances leading up the 2008 bankruptcy are unknown, I cannot make a finding about Applicant's financial habits or history preceding it, whether the events leading up to the bankruptcy are likely to recur, or how the events affect his current security worthiness. Although the bankruptcy and the medical debt happened within five years of each other, they are separate incidents that do not show a history of financial mismanagement or irresponsibility.

Applicant incurred the medical debt alleged in SOR ¶ 1.a after an accident. Medical debt is unlike other types of debt, as it does not provide much information about an individual's security worthiness. In Applicant's case, the debt was incurred for emergency medical care as opposed to frivolous or irresponsible spending or otherwise living beyond one's means. He incurred the debt under unplanned, unexpected, and nondiscretionary circumstances. Applicant had no say in the transportation method or treatment healthcare professionals deemed necessary to ensure proper care. Having been uninsured at the time of the accident, he had no choice but to incur debt to secure the medically necessary treatment, which resulted in tens of thousands of dollars in unexpected debt. Furthermore, the record establishes that Applicant attempted to pay the debt, but stopped once doing so became financially unfeasible. The record merits the application of the following mitigating conditions:

AG ¶ 20(a) the behavior happened long ago, was so 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(b) the conditions that resulted in the financial problems were largely beyond the person's control. . . , and the individual acted responsibly under the circumstances.

Based on the record, I have no doubts 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 purpose of a security clearance adjudication is not debt collection. Rather the purpose is to make "an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the person is an acceptable security risk." (AG ¶ 2(a)) There is no indication of current financial problem. The record has not established that Applicant lives above his means or is at risk for potential exploitation based on his finances. Nor has the record established that he has engaged in such reckless or irresponsible behavior that suggests that he has demonstrated an unwillingness or inability to follow the rules related to classified information. He disclosed the required derogatory information on his security clearance application, which indicates he is likely to continue to do the same as a clearance holder. 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	FOR APPLICANT
Subparagraph 1.a – 1.b:	For Applicant

Conclusion

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge