



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



In the matter of:)
)
) ISCR Case No. 20-03196
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2023

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 has demonstrated a good-faith effort to resolve his delinquent debt as well as an effort to develop better financial habits. Clearance is granted.

Statement of the Case

On January 20, 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 May 4, 2022, I appended to the record as Hearing Exhibit (HE) I, the case management order, dated April 22, 2022 and the disclosure letter the Government sent to Applicant, dated June 3, 2022, as HE II. I admitted Government's Exhibits (GE) 1 through 5 without objection. After the hearing, Applicant timely submitted Applicant's Exhibits (AE) A through J, without objection, as follows:

AE A: Debt Matrix (1 page);

AE B: Settlement Agreement re: SOR ¶1.a (1 page);

AE C: Settlement Agreement re: SOR ¶1.b (3 pages);

AE D: Settlement Agreement re: SOR ¶1.c (1 page);

AE E: Settlement Agreement re: SOR ¶1.e (1 page);

AE F: Settlement Agreement re: SOR ¶1.g (1 page);

AE G: Payment Receipt re: SOR ¶1.h (2 pages);

AE H: Settlement Agreement re: SOR ¶1.i (1 page);

AE I: Payment Receipt non- SOR debt (2 pages); and

AE J: Payment History IRS Tax Years 2020 – 2021 (4 pages).

I marked Department Counsel's email indicating no objection to Applicant's post-hearing submissions as HE III. DOHA received the transcript on March 2, 2023.

Findings of Fact

Applicant, 31, has worked for a federal contracting company since November 2018. He served in the Marine Corps from June 2009 to February 2017, as an infantryman, and was honorably discharged. He deployed twice on combat tours. He was initially granted access to classified information while on active duty. He completed a security clearance application in August 2019 and reported some derogatory financial information. The ensuing investigation discovered Applicant had substantial delinquent debt. The SOR alleges that Applicant owes \$36,977 on 11 delinquent accounts. (GE 1-5; Tr. 36-37, 38)

Applicant's financial problems began in April 2018 after he was fired for fighting with another employee. He was unemployed for seven months. As a result, his household income decreased from \$53,000 to \$39,000. To make ends meet, he used

personal loans and credit cards to pay his living expenses. He did so knowing that he had no means of repaying the debt as he incurred it. (GE 1-2; Tr. 39-40, 41)

In Applicant's current position, he earns approximately \$63,600 annually after taxes. His wife's income has also increased, and their household income is now \$110,600. He began working on the resolution of his delinquent debts in April 2021, using the proceeds from an employee referral bonus to pay the debts alleged in SOR ¶¶ 1.d (\$3,096), 1.j (\$721), 1.k (\$2,338), and one non-SOR debt for \$1,272. (This non-SOR debt is the same amount as the debt alleged in SOR ¶ 1.f. Though it has not been established by the record, it is possible it is the same debt). He also set up an installment agreement for a 2020 tax liability. He has made timely payments since August 2021. (GE 5; AE J; Tr. 44-45, 50, 52-53, 62, 64-65)

In January 2022, Applicant received a 100% disability rating from the Department of Veterans Affairs. As a result, he began receiving \$3,400 per month in disability benefits. He has used the extra income to reduce his living expenses, pay unexpected expenses in March 2022, and resolve his delinquent accounts. In April 2022, he paid SOR ¶ 1.h (\$789). In May 2022 he paid another non-SOR debt for \$3,000. (AE I) After the hearing, Applicant established payment agreements for the accounts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, and 1.i. He paid off the debts alleged in SOR ¶¶ 1.e, 1.g, and 1.i according to the payment plans. He has not yet made plans regarding the debt alleged in SOR ¶ 1.f (\$1,272). (Tr. 38, 40, 44, 51, 57, 62-63; AE B-F, H, J)

Applicant's government client's representative testified at the hearing. He knows Applicant personally and professionally. The witness testified that Applicant's position has a large financial component. He is responsible for handling hundreds of financial mechanisms for the command he supports that value upwards of six million dollars. He is often required to handle large sums of cash. He has managed these responsibilities without issue. The witness is aware of the security clearance concerns related to Applicant's finances and has no concerns about Applicant performing the financial tasks related to his job. (Tr. 25-33)

Applicant's second-level supervisor also testified. He has a personal and professional relationship with Applicant. He is aware of the financial concerns related to Applicant's security clearance. Applicant has discussed with him his strategy for resolving his debt. His supervisor believes that Applicant lives within his means. He testified that Applicant has not exhibited any behaviors that raises concerns about how he manages his personal finances. (Tr. 18-24)

Applicant attributes a lot of his financial problems to a lack of knowledge. At the hearing, he testified that upon separating from the military at age 27, he only knew how to be an infantryman. He admitted that he is still learning how to manage his finances. He and his wife, who welcomed their first child together in August 2022, have developed a written budget. They have adjusted their expenses to ensure that they are not overspending. Going forward, Applicant intends to use his disability benefits to resolve his remaining delinquent accounts. He is paying the smaller accounts first and then moving on to larger accounts that require payment plans. (Tr.43-44,48, 56-58, 61)

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 \$46,977 on 11 delinquent debts. He also admits knowingly incurring debt without the means to repay it. 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 incurred delinquent debt during a seven-month period of unemployment. The events causing his unemployment were not beyond his control. He engaged in workplace misconduct that resulted in his termination. However, while in his current position, he has demonstrated a good-faith effort to repay his creditors. He has used the extra income he has received since April 2021 to resolve his delinquent accounts. He has resolved over \$4,000 in non-SOR debts, and seven SOR debts (¶¶ 1.d, 1.e, 1.g, 1.h, 1.i, 1.j, 1.k), totaling \$11,933. While some of the SOR debts remain unresolved, his promises to pay them are credible. Applicant has demonstrated action consistent with his stated strategy of using his extra income to resolve his debt. Applicant also presented sufficient information to establish that his financial problems did not affect his ability to handle the financial components of his position. His performance, as corroborated by his government client representative, does not cast doubt on his ongoing security worthiness. The record supports a finding that he has presented sufficient evidence to mitigate the financial concerns.

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)) Applicant has demonstrated considerable growth and maturity since his separation from the military. He is taking the necessary steps to rehabilitate his finances and develop better financial habits. He has demonstrated that he possesses the self-control and willingness to follow rules and regulations, necessary for those granted access to classified information in performance of the financial tasks related to his job. 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.k:	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