



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



In the matter of:)	
)	
)	ISCR Case No. 23-00467
)	
Applicant for Security Clearance)	

Appearances

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

11/21/2023

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Although Applicant’s financial problems were caused by events beyond his control, he did not establish a sufficient track record of debt repayment to mitigate the alleged security concerns. Clearance is denied.

Statement of the Case

On March 8, 2023, 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. The Government submitted its written case on May 24, 2023. 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 5, 2023 and provided a response. The attachments to the FORM are admitted to the record as Government's Exhibits (GE) 1 through 8, and Applicant's Exhibits (AE) A through F, without objection from either party.

Findings of Fact

Applicant, 35, has worked for his employer, a federal contracting company, since October 2021. He completed a security clearance application, his first, in July 2022. He did not disclose any derogatory information. The investigation revealed several delinquent debts. The SOR alleges that Applicant owed \$48,271 on seven delinquent accounts (SOR ¶¶ 1.a through 1.g). He admits to owing SOR ¶¶ 1.b through 1.g and denies owing SOR ¶ 1.a because it is a duplicate of SOR ¶ 1.b. (GE 4)

Applicant cites two events as the genesis of his financial problems. In 2018, he and his long-time partner, who is the mother of two of his three children, ended their relationship. He moved out of the home they shared. She kept the couple's joint assets, including their cash savings. He also began paying child support. In 2021, he experienced a decreased income related to the Covid-19 pandemic. Between November 2010 and October 2021, Applicant worked full time for a nationally-known retailer. Prior to the Covid-19 pandemic, he earned his base salary and overtime, which he had come to rely on to meet his financial obligations. At some point during the pandemic, the employer suspended operations but continued pay their employees their base salaries. The alleged debts became delinquent between January 2019 and June 2021. Applicant began his current job in October 2021. He continues to work part time with his previous employer. In his response to the FORM, he indicated that his base salary is higher in his new position but did not disclose his annual salary in either position. (GE 4,8)

Also, in his June 2023 response to the FORM, Applicant argues that SOR ¶ 1.a (\$13,294) is a duplicate of SOR ¶ 1.b (\$11,690). This assertion is not supported by the record. The credit reports in the record, GE 5 and 6, identify these debts as different accounts. Furthermore, in his August 2022 subject interview, Applicant told the investigator that the debt alleged in SOR ¶ 1.a (\$13,294) was for the deficiency balance on a loan for a repossessed vehicle. He has made no plans to resolve this debt. He reported that the debt alleged in SOR ¶ 1.b was for a signature loan. (GE 8, AE A, D)

Applicant provided documentation showing that he settled the debts alleged in SOR ¶¶ 1.c (\$5,774); 1.e (\$1,236); and 1.f (\$1,124) for less than the amounts owed. He has agreed to resolve the debt alleged in SOR ¶ 1.b (\$11,690) with \$25 monthly payments until the debt is resolved. He has also entered into a payment agreement for the debt alleged in ¶ 1.d (\$3,915), agreeing to pay the creditor \$30 per month from June

2023 to May 2024, when the payments will increase to \$160 per month until the balance, including interest, is paid in full. Applicant did not offer any information about his plans to resolve SOR ¶¶ 1.a and 1.g (\$11,238).

Applicant did not provide any financial information regarding his current income or assets. Nor did he provide a personal financial statement or budget, detailing his currently monthly income and expenses. He believes that his financial position is improving. In his April 2023 Answer to the SOR, he explained that because he was repaying a loan against his retirement account, he could not afford to pay the debts alleged in the SOR. After he completed paying the loan in May 2023, he planned to take out another loan so that he could file for bankruptcy protection. There is no indication that he has executed that plan. (Answer)

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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] meet 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 and the record supports a finding that Applicant is indebted to six creditors for \$48,271. The Government has established its *prima facie* case that certain of the financial considerations apply, specifically:

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

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

The following mitigating conditions are partially applicable, but do not fully mitigate the alleged concerns:

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of unemployment, 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; and,

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

Applicant’s financial problems were caused by the end of a long-term relationship in 2018, compounded by the the economic effects of a global pandemic between 2020 and 2021. Although his base income did not decrease, he lost the ability to earn overtime, on which he previously relied to meet his financial obligations, results in the accumulation of delinquent debt.

After the SOR issued in March 2023 and he received the FORM in May 2023, Applicant began to contact his creditors to make payment arrangements for the alleged debts. He settled the debts alleged in SOR ¶¶ 1.c, 1.e, and 1.f and arranged payment plans for SOR ¶¶ 1.b and 1.d. He began earning more than his pre-pandemic income in October 2021. The record does not contain an explanation as to why he waited almost two years to address his delinquent debts. Furthermore, there is insufficient information in the record to establish that he can honor the payment arrangements with his creditors. The record does not contain information about his currently income, expenses, or discretionary income. He did not establish a history of debt repayment to establish that he is more likely than not to continue paying on these debts in the future. He has not made any plans to resolve the debts alleged in SOR ¶¶ 1.a (\$13,294) and 1.g (\$11,238).

Based on the record, doubts remain about Applicant's current security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt-collection proceedings. The AGs do not require an applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. He has not done so. Applicant has not established the necessary track record of debt repayment necessary to mitigate the concerns alleged in the SOR.

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:	AGAINST APPLICANT
Subparagraph 1.c, 1.e, 1.f:	For Applicant
Subparagraph 1.a, 1.b. 1.d, 1.g:	Against Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge