



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



In the matter of:)	
)	
)	ISCR Case No. 21-02404
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2023

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to revoke his eligibility for a security clearance to work in the defense industry. Despite experiencing significant periods of unemployment and underemployment, Applicant acted responsibly considering his circumstances. He made a good-faith effort to pay his delinquent accounts and has rehabilitated his finances. Clearance is granted.

Statement of the Case

On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudication 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.

Because of Applicant's work-related travel schedule between October 2022 and February 2023, the parties were unable to settle on a hearing date until February 8, 2023, for February 23, 2023. DOHA issued the Notice of Hearing on February 13, 2023. At the hearing, which proceeded as scheduled, I advised Applicant of the notice requirement in Directive Additional Procedural Guidance ¶ E3.1.8 that he be given 15 days advance notice of the time and place of the hearing. He waived the notice requirement and confirmed his desire to continue with the hearing as scheduled. (Tr. 8-9)

I appended to the record as Hearing Exhibit (HE) I, the disclosure letter the Government sent to Applicant, dated March 1, 2022. I admitted as HE II and HE III, debt matrices prepared by the Government and the Applicant, respectively. I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A and F, without objection. After the hearing, Applicant made three post-hearing submissions. (Tr. 15)

Submission 1, dated March 29, 2023, and April 2, 2023, consisted of an email providing a debt status update and a debt matrix, which are appended to the record as HE IV (2 pages). Submission 1 also contained 16 pages of supporting documentation. The Government did not object to Submission 1 on April 5, 2023. The Government's response is appended to the record as HE V (1 page). Submission 2, Applicant's response to HE V, is a second debt status update email, dated April 6, 2023, and is appended to the record as HE VI (1 page). Applicant sent Submission 3 on April 26, 2023, consisting of a debt status update, a debt matrix, and 18 pages of supporting documentation. The April 26 email and debt matrix are appended to the record as HE VII (2 pages). Two of the documents in Submissions 1 and 3 were duplicates of AE A and E. I identified the remaining 15 documents as AE G through U.

On October 23, 2023, I sent the Final Exhibit List, along with copies of HE IV through VII and a copy of the documents identified as AE G through U. I ordered the parties to review the Final Exhibit List and certify its completeness and accuracy by October 27, 2023. The Government certified the Final Exhibit List on October 23, 2023. Applicant did not respond. Based on the Government's response, AE G through U, are admitted without objection. The Final Exhibit List and the Government's certification are appended to the record as Appellate Exhibit (AP Ex) I and II, respectively.

Findings of Fact

Applicant, 68, has held a security clearance since 1987. He was initially granted access during his service in the U.S. Army. Since retiring from the military in 2000, he has lived and worked abroad on federal contracts. He has worked on the same contract since May 2016, switching employers as the contract was awarded to different

contracting companies. He has worked for his current employer since April 2021. He completed his most recent security clearance application in October 2013, disclosing \$87,000 in delinquent debt for the deficiency balance on a repossessed vehicle and a credit card. The ensuing investigation revealed other delinquent debt. The SOR alleged that Applicant owed \$159,459 on nine delinquent accounts. (GE 1 – 5; Tr. 21-22, 44)

Applicant's financial problems began in 2014. He worked overseas for Company 1 from 2000 to 2013, when he experienced a medical issue that required him to return to the United States for treatment. He did not get paid while on medical leave. At the time he was earning between \$180,000 and \$190,000 annually. While he was out on medical leave, Company 1 lost the contract on which he was working, leaving him unemployed after he was given medical clearance to return to work. As a result, Applicant was unemployed from May 2014 to April 2015. (Tr. 23-27, 38, 71)

Applicant's wife did not work outside the home. He was solely responsible for paying the couple's financial obligations. During his period of unemployment, he depleted his \$200,000 in retirement savings and used credit cards. Sometime in 2014 or 2015, he consulted a bankruptcy attorney. Ultimately, he decided not to pursue bankruptcy protection out of fear of losing the family home. (Tr. 27-28, 48-49, 70-71)

In May 2015, he began working for Company 2 on a federal contract. He earned \$3,000 per month, after taxes in that position. In December 2015, he returned to Company 1, earning between \$72,000 and \$74,000 annually, less than half of his previous pay. He moved to Company 3 in February 2016, where he worked for three months, leaving in May 2016 to work for Company 4. He did not earn sufficient income to meet his expenses and continued to use credit cards as needed. Applicant's finances did not begin to recover until he began working for Company 4 in May 2016, earning between \$200,000 and \$210,000. At some point, the contract transitioned to Company 5, Applicant's current employer, but his salary remained the same. (Tr. 32, 39-41)

After returning to work, Applicant prioritized paying off small accounts, anything ranging from \$200 to \$1,500. He paid off a total of \$20,000 to \$25,000 in small accounts. He then focused on paying debts in his wife's name. He believes that he has paid between \$40,000 to \$50,000 of her delinquent debt. He then started to address the debts accumulated in his name, paying off between \$20,000 and \$25,000. (Tr. 32, 39-41)

In 2017 or 2018, the lender holding the student loans alleged in SOR ¶¶ 1.b and 1.d, secured a garnishment against Applicant. He initially obtained the loans to finance the college education of one of his three children. The garnishment, almost \$1,600 per pay period, remained in effect until April 2020, when President Biden instituted the student loan payment pause during the covid-19 pandemic. He believes he paid between \$72,000 and \$80,000 toward the garnishment. During the payment pause, the student loans were considered to be in good standing. Although the payment pause was lifted as of October 2023, garnishments and other collection efforts will not resume until sometime in 2024. It is not clear if garnishees are required to make payments outside the order until the Government resumes the garnishments. (See,

<https://studentaid.gov/announcements-events/covid-19>) During the payment pause, Applicant has set the garnishment amount aside for savings. (AE B; Tr. 33, 59-61, 76)

He also initiated payment plans on the debts alleged in SOR ¶¶ 1.c (\$24,360), 1.e (\$20,736), and 1.f (\$11,950), which are held by the same creditor. However, the accounts are being collected by three separate companies. In approximately 2017, he began paying \$50 per month toward each account. The credit reports in the record, which range in dates from November 2020 to March 2022, show that the account balances have been decreasing in accordance with the plans. He resolved the account in SOR ¶ 1.c in April 2023. In March 2023, he increased the monthly amount for SOR ¶ 1.e from \$50 per month to \$300 per month. He has established payment dates with the creditor for each month through July 2024. A March 2023, letter from the agency collecting SOR ¶ 1.f, confirms the information in the credit reports that the account balance is decreasing according to the \$50 per month payment plan. (AE C-D, F-K; Tr. 51-57)

In April 2023, Applicant resolved the debt alleged in SOR ¶ 1.h (\$4,904), a credit card. He also resolved the medical debt alleged in SOR ¶ 1.i (\$1,027). Applicant testified at the hearing that he had not made any payments on the debts alleged in SOR ¶¶ 1.a (\$33,281) and 1.g (\$10,016). Unbeknownst to Applicant, the creditor issued a 1099-C canceling SOR ¶ 1.a in 2018, three years before the SOR was issued. He was also unaware the creditor holding SOR ¶ 1.g, cancelled that debt in 2021. He has asked his accountant to refile his federal and state income tax returns for those years to reflect the debt cancellation. Applicant has also provided documentation that he satisfied a non-SOR credit card debt for \$4,160. (AE E, L-R; Tr. 49, 57-59)

In addition to the SOR debts, Applicant has also been paying federal and state income tax liabilities for the 2019 and 2020 tax years. He did not have sufficient income tax withheld from his pay during those years. He believes that he owes \$15,000 federal and state income taxes combined. He pays \$420 toward the federal income tax liability and \$400 toward the state income tax liability, each month. (AE T-U; Tr. 65-69)

Applicant provided a February 2023 credit report showing that he has a credit score of 765. His credit report shows that he is not currently overly reliant on credit, with only 19% credit usage. Applicant has \$26,000 in cash savings. He has started to recoup his retirement savings, which are now \$50,000. (AE A; 62-63)

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

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 SOR alleged that Applicant owed \$159,459 on nine delinquent accounts. Each of the alleged debts is reported as delinquent in the credit reports in the record. 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(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 did not incur debt under circumstances that indicate irresponsible behavior. He did not have an unwillingness to pay his debts, rather an inability to do so. He became unemployed for 12 months after having to leave the contract on which he was working to get medical treatment. He was then underemployed for another 12 months, earning less than half of his pre-unemployment salary. During these two years of unemployment and underemployment he incurred the debts alleged in the SOR.

He acted responsibly by beginning to address his debt when he returned to full employment and could afford to do so. Despite paying a garnishment that captured \$3,000 of his monthly income for SOR ¶¶ 1.b and 1.d from 2017 to 2020, Applicant also paid off three of the SOR debts (¶¶ 1.c, 1.h, and 1.i), totaling \$30,291 as well at least \$25,000 in non-SOR debts. He has ongoing payment plans for SOR ¶¶ 1.e. and 1.f, as well as over \$800 per month toward his federal and state tax liabilities. Applicant has also acted responsibly by saving the \$3,000 each month that was previously taken for the student loan garnishment. His efforts are not diminished by the fact that the creditors holding the debts alleged in SOR ¶¶ 1.a and 1.g, canceled the debts. Furthermore, the credit reports in the record provide strong evidence to mitigate the financial considerations concerns. The credit reports are evidence that Applicant has rehabilitated his credit and has developed a favorable record of repayment as indicated by his above average credit score.

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.i: 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