



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



In the matter of:)
)
) ISCR Case No. 21-02799
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2024

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 were not caused by irresponsible or reckless financial habits, but financial struggles resulting from his wife’s medical issues and insufficient income. He did not provide enough evidence of debt repayment to mitigate the financial considerations concerns. Clearance is denied.

Statement of the Case

On March 31, 2022, the DOD issued an 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.

DOD 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 grant his security clearance. Applicant timely answered the SOR and requested a hearing.

At the hearing, convened on June 26, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated October 29, 2021. I admitted Government's Exhibits (GE) 1 through 9, and Applicant's Exhibit (AE) A, without objection. After the hearing, Applicant timely submitted documents identified as AE B through AE F, which are admitted without objection from Department Counsel. (HE II) DOHA received the transcript (Tr.) on July 7, 2023.

Findings of Fact

Applicant, 41, has worked for his employer, a federal contractor, as a security officer since January 2020. He completed a security clearance application, his first, on May 6, 2020. He disclosed a Chapter 7 bankruptcy that was discharged in 2013 as well as outstanding federal and state income taxes. The ensuing investigation revealed additional delinquent accounts. The SOR alleges Applicant owes \$41,358 on ten delinquent accounts, including outstanding federal taxes. (GE 1; Tr. 16-17)

Applicant married in July 2003. Although he held steady employment from August 2003 until January 2020, his wife worked sporadically because of an ongoing medical issue. For most of their marriage, Applicant served as the primary source of income for their family, which included the couple's daughter and, at times, two of his three stepchildren. Although the couple maintains separate bank accounts, Applicant's wife's medical condition has consistently had a negative impact on their joint finances and caused them to accumulate debt. In July 2013, the couple filed for bankruptcy protection. Their debts were discharged in December 2013. He testified that within a year of the bankruptcy discharge, the couple began to experience financial problems again. (GE 1, 7; Tr. 19-22, 24, 51-53)

Applicant's tax problems began around 2016. Historically, he and his wife chose to file their income taxes using the married filing separately status. Prior to the 2016 tax year, Applicant claimed the couple's daughter as a dependent on his income tax return. Since 2016, his wife has claimed their daughter as a dependent. He did not adjust the income tax withholding rate from his pay to address the change, resulting in additional income tax liability each year between 2016 and 2022. SOR ¶ 1.k alleges he currently owes \$16,199 in outstanding federal taxes. He sought an installment agreement with the IRS but could not afford the terms. He is not on a formal payment plan but makes *ad hoc* payments as he is able. At the time of the hearing, he had made two payments to the IRS totaling \$375. He claims he paid \$1,349 in state taxes. He provided payment receipts for two \$100 payments made to the state tax authority in January 2024. (AE A, D; Answer; Tr. 38-44)

Applicant denies owing the debts alleged in SOR ¶¶ 1.b and 1.g - 1.i, claiming they have been paid. However, he only provided proof of payment for SOR ¶ 1.b. He also denied owing SOR ¶ 1.c, because he believed it was included in his 2013 bankruptcy. However, GE 8 shows he reaffirmed the debt during his bankruptcy but did

not follow through with the agreed upon payment plan. In June 2023, he entered a payment arrangement for \$148 each month and provided evidence of the first payment in July 2023. He claims he established payment plans for the debts alleged in SOR ¶¶ 1.a and 1.j but did not provide any evidence of payments. He admits the debts alleged in SOR ¶¶ 1.d – 1.f but has not taken any steps toward the resolution of those accounts. (AE B; Answer; Tr. 28-38)

Applicant plans to address his outstanding debts by taking on additional jobs to earn more income. He began working a part-time job sometime in 2022, earning \$10 per hour, working up to ten hours per week. At the time of the hearing, he also planned to start a second security job at a concert venue. He planned to work shifts on his days off or in the afternoon and evenings before his overnight shift at his full-time job. His wife is currently healthy and working. After paying their recurring expenses, Applicant testified that he has over \$600 in disposable income each month. (Tr. 17-18, 25-27, 46-50)

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

Guideline F, Financial Considerations

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. 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 the Government’s *prima facie* case that Applicant owed \$41,358 in delinquent debt, including \$16,199 in unpaid federal income taxes. The following financial considerations disqualifying conditions apply:

AG ¶ 19(b) unwillingness or inability to satisfy debts regardless of the ability to do so;

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

AG ¶ 19(f) failure to file or frequently filing annual Federal, state, local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating condition partially applies:

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.

Applicant’s financial problems were not the result of reckless or irresponsible behavior, but events beyond his control - the financial impact of his wife’s medical issues, her inability to work consistently, and insufficient income to support his family. He is acting responsibly by taking on additional employment to generate additional

income. However, he has not provided a sufficient track record of debt repayment to mitigate the underlying security concerns.

Based on the record, Applicant is not a suitable candidate for access to classified information at this time. 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)). Although, an applicant is not expected to have resolved all the alleged debts in advance of the hearing, he is responsible for providing sufficient evidence to explain, refute, or rebut the SOR allegations. Applicant did not, failing to meet his burdens of production and persuasion.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.l:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant’s eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge