



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



In the matter of:)	
)	
)	ISCR Case No. 22-00883
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, 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. His history of financial problems is not mitigated by the favorable financial information or whole-person evidence in the record. Clearance is denied.

Statement of the Case

On June 2, 2022, 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 *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 27, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated September 19, 2022. I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A through H, without objection. After the hearing, I left the record open until September 1, 2023, to allow Applicant to submit additional documentation. He made his first submission on September 5, 2023; however, given the volume of the submission, I asked that he resubmit it through DODSAFE. He uploaded two files on October 9, 2023. The first file is one, 126-page document. The second is an Excel workbook containing 13 spreadsheets. The 14 documents are admitted to the record as AE I through W, without objection. (HE II). DOHA received the transcript (Tr.) on July 7, 2023.

Procedural Matters

SOR Amendment

During the hearing, Department Counsel moved to the amend the SOR to conform with Applicant's testimony that he had not filed federal or state income tax returns from 2019 to at least 2021. I granted the motion. The amendment is added to the SOR as ¶ 1.k. Applicant denied the allegation. (Tr. 75-77, 103-117)

In response to Applicant's post hearing submissions, Department Counsel moved to amend the SOR to add two allegations: 1.l that Applicant owes \$91,077 in Federal taxes for the 2017 through 2022; and 1.k that Applicant owes \$29,379 in state income taxes for the tax years 2017 through 2022. The motion is denied. The SOR clearly alleges a history of financial problems that raises security concern. While the allegations are reflective of the information in Applicant's post-hearing submissions, additional allegations are cumulative.

Findings of Fact

Applicant, 46, has worked for his employer as the chief operating officer of a startup company seeking to obtain federal contracts. He has been in this position since September 2020. He was initially granted access to classified information in 2004 during his service in the U.S. Navy. He completed his most recent security clearance application in May 2015, disclosing six delinquent accounts totaling \$317,000. The background investigation discovered additional delinquent accounts. The SOR alleges that Applicant owes \$119,423 on ten delinquent accounts. (Tr. 25-27; GE 1-5)

Applicant began experiencing financial problems during his naval service. He served on active duty from January 1997 to February 2014, and in the Navy Reserve from February 2014 to February 2017, when he retired. He initially consulted a bankruptcy lawyer sometime between 2012 and 2013, to address his debt as he transitioned to civilian life but was advised that his income was too high to qualify for bankruptcy protection. He claims that the lawyer advised him to engage in a "simulated

bankruptcy,” in which he would stop paying his debts and allow them to become uncollectible. (Tr. 56,60, 63, 77-79; GE 1)

Since transitioning to civilian employment, Applicant has sought employment with higher pay to meet his personal expenses. He worked his first civilian job from December 2013 to October 2015. He sought other employment when he realized that there was no room for advancement. He continued to seek higher paying jobs, transitioning from engineering into sales roles. He worked for two different companies between 2015 and 2017, with the hopes of earning sales commissions, in addition to his base salary. Neither sales position worked out as he planned. He accepted his current position with the understanding that if the company was successful, the job would be lucrative. And that if the company was not, he would not receive the agreed upon compensation. He accepted the position expecting to earn a \$144,000 base salary, as well as one percent of the company’s annual revenue and up to six percent equity in the company, which he believed would be between an additional \$20,000 and \$30,000 annually. (Tr. 30, 45-48, 52-53, 57, 61, 80-84; GE 7)

Because he continued to struggle financially, Applicant decided to implement the simulated bankruptcy strategy in 2015. He admits that he stopped paying his debts between 2015 and 2016, including three student loans. He instead chose to focus on his child support obligations for three of his five children. He does not have any financial obligation for two of the five children. As of the hearing, Applicant had not made any payments on the accounts alleged in the SOR. (Tr. 43-44, 63-67; GE 2-5) In his post-hearing submission, Applicant explained with respect to SOR ¶¶ 1.b, 1.c, 1.f, 1.g, and 1.j:

Purposefully "unresolved" per my "simulated bankruptcy plan," which I mentioned in my initial response to the SOR, as well as, within the hearing. Similar to pages 17-18, after a period of time, "the statute of limitations period" is met. At this point, it is too old to collect upon and the creditor writes it off as a loss. The debt is no longer owed to anyone. Similar to declaring bankruptcy, the creditor writes it off. "Settled" follows in time, per plan. It falls off of the credit report and one’s credit begins to improve, from that moment forward. A “fresh start” is given, per law. This fresh start is what I needed, and only now am I beginning to realize. (AE I pp 1-4, 11-14,19-21; AE K)

He claims not to recognize the debt alleged in SOR ¶ 1.h. He believes that the debt alleged in ¶ 1.i is associated with a home he previously owned and is no longer collectible under the statute of limitations. He explained that the creditor advised him to address the debt with the credit reporting agencies. He challenged the debt with one of the credit bureaus and the debt does not appear on the October 2023 credit report he submitted. (AE I, pp.15-18; AE K)

The SOR also alleges that Applicant owes \$43,705 on three delinquent student loans. He admits that he stopped paying the loans in 2015 or 2016. During the student loan payment pause, student loans that were previously in default were considered

rehabilitated and considered in good standing. After the pause was lifted in October 2023, Applicant took advantage of the opportunity to rehabilitate his student loans through the Fresh Start Program, which is designed to rehabilitate and return to good standing previously defaulted loans. Enrollment in the program opened on December 1, 2022. He enrolled each loan in the program on October 5, 2023, selecting an income-driven income plan. (<https://studentaid.gov/announcements-events/default-fresh-start>; Tr. 67-70, 84; GE 2-5; AE I, pp. 5-10)

In response to questions about the status of his federal and state income tax filings, he admitted that he had not filed either between 2019 and 2022. He is a 1099 employee. His employer does not withhold federal or state income tax from his pay. He also admitted that he likely owed additional federal and state income tax liabilities. In his post-hearing submission, he prepared a tax summary showing his federal and state income status between 2017 and 2022 tax years. Applicant described the federal income tax return status for the 2017, 2018, 2020, 2021, and 2022 tax years as “complete/filing.” He owes over \$92,000 in taxes for those years. He paid \$3,600 toward the balance on August 31, 2023. The records he provided show that he has not made regular payments toward his outstanding federal income tax debt. He describes the status of his state income tax returns as “drafting/filing” for the 2017, 2018, 2020, 2021, and 2022 tax years. He owes approximately \$29,000 in additional state income tax liability. He plans to pay \$1,690 toward outstanding tax liabilities each month for the next 72 months. He listed the 2019 federal and state income tax returns as “filed/paid” with no tax liability owed. He has not retained a tax professional. (Tr. 72-74, 85-88, 103-117; AE I, pp.90-94; AE M-W)

Although he does not use a formal budget to monitor his expenses, he believes that his finances are under control. According to a October 2023 credit report, his credit score is 700. The report shows that he has no derogatory accounts reported, citing the statute of limitations. (Tr. 49-50; AE I, pp. 21-52)

He believes that his finances will improve dramatically once his company secures a large federal contract on which it is bidding. At the time of the hearing, the company was not yet generating sufficient revenue to pay its expenses. Since its inception, the company has relied on its primary investor for capital to pay the operating expenses. However, in 2023, the investor began scaling back on its capital injections into the company. As a result, Applicant explained that the company began “bootstrapping” its available cash to pay expenses. At the time of the hearing, he believed the company was going to reduce his pay by an unknown amount to divert available funds to accounts payable. He believes that if the company wins the contract it should begin to realize revenue during the 2024 fiscal year. As of the hearing, Applicant has approximately \$11,000 in cash and no other assets. (Tr. 35-39, 89-90)

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

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 denied.

Nichole L. Noel
Administrative Judge