



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-00924
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2024

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 has reduced the alleged delinquent debt by over \$12,000, showing a willingness to resolve his delinquent accounts as well as a track record of debt repayment. Clearance is granted.

Statement of the Case

On May 20, 2022, the Department of Defense Consolidated Adjudication Facility (DCSA CAF) issued a statement of reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines. 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 CAF adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended 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 July 21, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter the Government sent to Applicant, dated August 3, 2022. I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A and D, without objection. After the hearing, Applicant timely submitted AE E through S, which are also admitted without objection. (HE II) DOHA received the transcript on August 1, 2023.

Findings of Fact

Applicant, 31, has worked for his employer, a federal contracting company since September 2014. He currently works as project engineer supporting the U.S. Navy. He completed a security clearance application (SCA) in November 2017, in which he did not disclose any derogatory information. The July 2021 background investigation and the credit reports obtained in May 2021 and February 2022 revealed delinquent debts. The SOR alleges he is indebted to seven creditors for \$124,866, and he failed to disclose the debts on his November 11, 2017 SCA. (GE 1-5; Tr. 17)

Applicant graduated from college in May 2014, which he financed, in part, with the private loans alleged in SOR ¶ 1.a (\$89,969). He obtained a master's degree in October 2017, which was financed by his employer. He earned a second master's degree in May 2023. At some point, he refinanced the loans alleged in SOR ¶ 1.a for a lower interest rate. He did not realize at the time he was refinancing from a student-loan product into an installment-loan product with a credit union. Although Applicant was enrolled in a second graduate degree program between 2021 and 2023, the private loans did not qualify for non-payment deferment status. He became unable to pay the loans and they were eventually placed in collection. (AE D; Tr. 16, 28-29, 54-55, 58-59)

He accepted a position with his employer with a \$52,685 starting salary. The job required him to attend a one-year training program that required him to move from his home state, State 1, to State 2. He did not receive any relocation assistance from his employer. He financed the move with the credit card alleged in SOR ¶ 1.c (\$9,168). After the completion of the program, he was assigned to a position in State 3. He received a pay increase to \$60,000. While in State 3, his grandfather became ill, and Applicant frequently traveled from State 3 to State 1 to spend time with him. He used the credit card alleged in SOR ¶ 1.d (\$6,409) to pay for his travel. In 2016, his employer relocated him to a location in Asia for a two-year assignment. He used the card alleged in SOR ¶ 1.e (\$2,144) to pay off the deficiency balance on the car he had to surrender to the creditor before moving out of the country. (Tr. 19, 59-62)

Applicant returned home in December 2016 to attend his grandfather's funeral. After returning to Asia, he began to deal with a medical issue and could not get proper treatment. He returned home to State 1 in March 2017 for treatment and also took a three-month leave of absence to address it. He financed his five flights back and forth to Asia with the credit cards alleged in SOR ¶ 1.b (\$10,242) and 1.f (\$3,008), which are

held by the same creditor. He returned to his position in May 2017 to complete the remainder of his term in Asia but found that he could not do so and requested a transfer back to the United States. (Tr. 19-20, 61, 63-66)

The company relocated Applicant to State 4 in December 2017 in a position earning \$72,000. When he moved to Asia, his employer moved Applicant’s furniture into storage. When he went to retrieve it, he found the furniture was unusable, and he had to replace it. The contract for this position ended in March 2018. He found another position with the company in State 1, earning \$75,000. He relocated in April 2018, breaking his lease in State 4. He used the credit card alleged in SOR ¶ 1.g to purchase new items for his new place in State 4 and to move back to State 1. (Tr. 21-22, 66-68, 71)

In State 1, Applicant lived in a city with a high cost of living and could not afford to pay his living expenses and his debt. In his July 2021 interview with a background investigator, he explained the debts alleged in SOR ¶¶ 1.b, 1.c., 1.d. and 1.f became delinquent in late 2018. The interest rates on the credit cards were high, making the monthly payments unaffordable. The debt alleged in SOR ¶ 1.e became delinquent in 2019. At the time of the subject interview, the account alleged in SOR ¶ 1.g was 60 days past due but has since been made current and is in good standing. (GE 2.; Tr. 22, 69)

During the covid-19 pandemic, Applicant received permission to move back to his hometown in State 1, reducing his living expenses significantly. His salary has also increased. He now earns \$116,000 annually. He is using the increase in his salary, the \$1,000 monthly he saves due to reduced living expenses, as well as the \$800 in supplemental income from his second job to pay down his delinquent debt. (AE B,C,E,S; Tr. 24, 26-27,71-72)

Applicant has taken financial literacy offered by financial coach Dave Ramsey. He has also taken a class with his church. (Tr. 47-50) To date, Applicant has reduced the debt alleged in the SOR by \$12,573, as outlined below:

SOR Allegation/ Amount	Debt Type	Payment Plan	Total Payments (as of Hearing)	Supporting Evidence
1.a (\$89,969)	Private Student Loan	\$400/month	\$200	AE A, F; Tr. 31-35
1.b (\$10,242) 1.f (\$3,008)	Credit Cards	\$300/month	\$4,367	AE A,E; Tr. 35-36
1.c (\$9,168)	Credit Card	\$100/month	\$3,450	AE A, E; Tr. 36-37, 42
1.d (\$6,409)	Credit Card	\$400/month	\$800	AE A, E, G; Tr. 37-38,
1.e (\$3,956)	Credit Card	Settled in June 2022	\$3,956 – total debt amount	AE A, E; Tr. 38-41
1.g (past due \$2,144)	Credit Card	\$260	Current - Pays as agreed	AE A, E, L; Tr. 44-46

In addition to the alleged debts, Applicant also pays \$300 per month to the IRS under an installment agreement. (Tr. 30)

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

Personal Conduct

The SOR alleges Applicant intentionally falsified his November 23, 2017 SCA because he failed to disclose the accounts alleged in SOR ¶¶ 1.a through 1.g as delinquent in response to Section 26: Financial Record. The record does not support this allegation. There is no evidence in the record to establish that any of the alleged debts were delinquent in November 2017. The earliest financial evidence in the record is dated July 15, 2021, Applicant's first interview with a background investigator. He testified the alleged debts did not start becoming delinquent until late 2018. The two credit reports in the record are dated May 2021 (GE 4) and February 2022 (GE 5), respectively. Neither credit report indicates delinquencies on the alleged accounts before November 2019. There is no evidence the debts were delinquent or otherwise required reporting when he completed his SCA. Accordingly, the personal conduct allegation is resolved in Applicant's favor.

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. (AG ¶ 18). The SOR alleged that Applicant owed \$124,866 on seven delinquent accounts. The debts started becoming delinquent in approximately 2018 or 2019. 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 did not incur debt under circumstances that indicate irresponsible or reckless behavior. When his work situation stabilized in 2018, he made significant life changes to address his financial situation. Since then, he has made progress toward reducing his delinquent debt and reducing his total debt amount by \$12,573 or 10%. He has demonstrated a track record of debt repayment.

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.g:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	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