



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



In the matter of:)	
)	
)	ISCR Case No. 22-01913
)	
Applicant for Security Clearance)	

Appearances

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

08/26/2023

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 did not provide evidence that he has addressed his delinquent debt. Clearance is denied.

Statement of the Case

On October 25, 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 December 7, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated February 16, 2023. I admitted Government's Exhibits (GE) 1 through 3, and Applicant's Exhibits (AE) A through C, without objection. After the hearing, I left the record open until January 5, 2024, to allow Applicant to submit additional documentation. He submitted three documents which are admitted, without objection, to the record as follows:

AE D: Handwritten Debt and Custody Agreement, undated (1 page);

AE E: Default Final Judgment of Dissolution of Marriage, dated January 26, 2017 (4 pages); and

AE F: Marital Settlement Agreement and Parenting Plan, January 12, 2017 (25 pages)

DOHA received the hearing transcript (Tr.) on December 18, 2023.

Findings of Fact

Applicant, 43, works as an information technology professional for a consulting firm that works on federal contracts. Although he does not currently work on a project that requires access to classified information, having a security clearance would allow his employer to staff him on a wider range of projects. He completed a security clearance application on April 17, 2022. He did not disclose any derogatory information. The investigation revealed Applicant is indebted to four creditors, totaling approximately \$22,265, which are alleged as SOR ¶¶ 1.a through 1.d. (Tr. 20-21; GE 1, 3)

The debts alleged in the SOR are from Applicant's marriage between May 2008 to January 2017. He claims that during the marriage, his wife opened consumer credit accounts in his name, because he had a stronger credit history. He provided an unsigned, handwritten agreement that upon their divorce, she would pay the debts she opened in his name, including the debt alleged in SOR ¶ 1.b (\$8,728). However, the court-ordered marital agreement Applicant initialed on each page and signed, indicates each party is responsible for debts incurred in their name. (Tr. 16, 22—24; GE 1, 3; AE D, F)

To date, Applicant has not paid any of the debts alleged in the SOR. He has prioritized the financial needs of his three children. He waived his financial interest in the marital home for the benefit of the two children born during the marriage. His oldest child, who is from a prior relationship, is 18 and lives with him full time. In the court-ordered marital agreement, Applicant is ordered to pay \$300 to his ex-wife each month for the two minor children born during the marriage. He stopped paying the amount in January 2023, when one child, age 14, decided to live with him full time. He testified

that although his ex-wife agreed to the change, he has not taken any steps to modify the custody or child support order with the court. (Tr. 17-20, 28, 36; GE 1; GE F)

Applicant earns \$67,000 annually. He is a dedicated father. Most of his income goes toward providing for the needs of his children. Aside from the debts alleged in the SOR, he has \$33,000 in student loans, and \$1,629 in other consumer debt, all of which is in good standing. Applicant provided documentation from a *USA Today* article that the average amount of debt held by people in his age group is almost \$155,000, which is less than his total debt. (Tr. 25,29, 39-42; AE C)

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 \$22,265 on four delinquent debts. The following financial considerations disqualifying condition applies:

AG ¶ 19(b) unwillingness to satisfy debts regardless of his ability to do so; and

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

None of the mitigating conditions apply. Applicant asserts his ex-wife is responsible for certain debts opened in his name during the marriage, specifically SOR ¶ 1.b. However, this assertion is not corroborated by the record. He signed a marital settlement agreement indicating he retained responsibility for all the debts incurred in his name. He has not taken any steps to resolve any of the alleged debts. Although the amount of Applicant’s delinquent debt may be considered low for adults in his age group, this does not mitigate the alleged 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)) Furthermore, applicants are not held to a standard of perfection. All that is required is that he develop a plan for handling his delinquent accounts and executing that plan. Applicant did not present evidence of his plans or efforts to resolve his delinquent accounts.

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.d:	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