



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



In the matter of:)	
)	
)	ISCR Case No. 22-02372
)	
Applicant for Security Clearance)	

Appearances

For Government: William Miller Esq., Department Counsel
For Applicant: *Pro se*

08/26/2024

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

Statement of the Case

On December 28, 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 4, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated March 7, 2023. I admitted Government's Exhibits (GE) 1 through 9, without objection. Applicant did not submit any documentation. After the hearing, I left the record open until January 5, 2024, to allow Applicant to submit additional documentation. He submitted five documents which are admitted to the record, without objection from Department Counsel (HE II), as follows:

AE A: Letter from Applicant, undated (1 page);

AE B: Payment Receipt (non-SOR debt), dated December 11, 2023 (1 page);

AE C: Account Information (non-SOR debt), Experian, undated (1 page);

AE D: DD-214, dated April 29, 2015 (1 page) and;

AE E: DOD Military Service Information, dated December 5, 2023 (1 page).

DOHA received the hearing transcript (Tr.) on December 14, 2023.

Findings of Fact

Applicant, 52, has worked in aircraft maintenance for a federal contractor since July 2020. He was previously granted access to classified information in connection with his service in the U.S. Navy from April 1991 to May 2015. On December 18, 2020, the Continuous Evaluation Program (CEP) developed information from a December 17, 2020, credit report that he had ten delinquent accounts, totaling \$22,084. He completed a security clearance application, dated January 5, 2022. He disclosed his failure to pay federal income taxes assessed by the IRS in 2018 after correcting Applicant's 2018 federal income tax return. He did not disclose any other derogatory financial information. The investigation revealed that Applicant received Chapter 13 bankruptcy protection in July 2016 and that he owed \$21,437 on seven delinquent accounts. The bankruptcy and the delinquent accounts are alleged in the SOR. (Tr. 29; GE 1, 6-8; AE D,E)

Applicant's financial problems began while he was on active duty. Since at least 2004, Applicant has maintained State 1 as his primary residence. He received orders for an assignment in State 2. The couple attempted to maintain residences in State 1 and State 2. He and his wife decided to keep their primary residence and rent a home in State 2. He filed for Chapter 13 bankruptcy protection in September 2011. The record does not contain information about the amount of debt included in the petition or the amount of the plan payments. The petition was discharged in July 2016. (Tr. 32; GE 8)

After receiving the benefit of bankruptcy protection, Applicant continued to struggle financially. He testified that he never got a good handle on his finances and began to accumulate debt again. He admits to accumulating the debts alleged in SOR ¶¶ 1.b. through 1.h. The debt alleged in SOR ¶1.b is for the deficiency balance on a voluntary car repossession. The debt originated with the financing company. A collection agency purchased the debt. This transaction is reported on as paid charged off or transfer to another creditor. Applicant admits that he has not made any payments toward this account. The accounts alleged in SOR ¶¶ 1.c through 1.e are for credit cards. The debt alleged in SOR ¶ 1.f is owed to an auto insurance company. The debts alleged in SOR ¶¶ 1.g and 1.h are debts owed to a telecommunications company. (Tr. 37, 43-48, 50-53, 74-75; GE 9)

After he received the SOR in December 2022, he decided to hire a credit repair company, which he paid between \$600 and \$900 to help him clean up his credit report. The company contacted Applicant's creditors and disputed the delinquent accounts under the Fair Credit Reporting Act. As of December 2022, none of the alleged accounts were over seven years old. Applicant believes that SOR ¶¶ 1.c - 1.e, and 1.g were resolved through the dispute process without Applicant having to make any payments to the creditors. However, he does not have any documentation from the credit repair service or the creditors to corroborate his claim that the disputes were resolved in his favor, such as an IRS FORM 1099-C indicating that the creditor cancelled the debt, or that they were not legitimate debts. He believed that he remained responsible for the debts alleged in SOR ¶¶ 1.f and 1.h. (Tr. 38-40,46,54-56, 64-65,77-80,82)

A November 20, 2023, credit report, admitted to the record as GE 9, showed that Applicant's financial issues are current and ongoing. GE 9 reported the was late on his two car loans. He admitted that he had gotten behind on the car payments because he prioritized sports fees for his children.

Applicant has over \$3,000 in disposable household income. He admitted that he has not used any of it to pay his delinquent accounts. Applicant also testified he expected to see an increase in income because his service-related disability rating increased to 80%. He testified that he planned to use the extra disposable income to pay SOR ¶¶ 1.d and 1.h. He did not provide any proof of payment. After the hearing, Applicant provided evidence that he resolved two non-SOR debts, including paying off the \$4,000 balance on one of his past-due car loans. He testified that he would take financial management classes to help understand his finances better. (Tr. 57-62, 81; AE A-C)

Applicant had two witnesses testify on his behalf at the hearing. Both know Applicant in his professional capacity. Both spoke highly of his reliability and trustworthiness. Both recommend him for continued access to classified information. (Tr. 17-29)

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 \$21,437 on seven 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 has a history of financial problems that necessitated his filing for bankruptcy protection. In the aftermath of the petition's discharge, his finances did not improve. He did not rehabilitate his financial habits and began to accumulate debt again. However, Applicant's recent accumulation of debt is not a result of his inability to pay his financial obligations, but financial disorganization. Despite being on notice since at least December 2020 about the Government's concern about his finances, he did not take any significant action toward resolving the delinquent debt until after he received the SOR in December 2022. He did not provide any evidence of his contract with the credit-repair service or evidence of their work on his behalf. He also did not provide evidence of his debt payments.

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. He 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.h: 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