



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



In the matter of:)	
)	
)	ISCR Case No. 22-01365
)	
Applicant for Security Clearance)	

Appearances

For Government: Cassie Ford, 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 incurred delinquent debt because of a decrease in income related to the Covid-19 pandemic. While he may have incurred debt due to circumstances beyond his control, he did not present sufficient evidence of his good-faith efforts to repay his delinquent accounts. Clearance is denied.

Statement of the Case

On August 16, 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 February 6, 2024, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated December 15, 2022. I admitted Government's Exhibits (GE) 1 through 4, without objection. Applicant did not submit any documentation. After the hearing, I left the record open until March 8, 2024, to allow Applicant to submit additional documentation. He submitted four documents which are admitted to the record, without objection from Department Counsel (HE II), as follows:

AE A: 2019 W-2 and Earnings Summary (2 pages);

AE B: 2020 W-2 and Earnings Summary (2 pages);

AE C: 2021 W-2 and Earnings Summary (2 pages); and

AE D: 2022 W-2 and Earnings Summary (2 pages).

DOHA received the hearing transcript (Tr.) on February 16, 2024.

Findings of Fact

Applicant, 50, has worked as an engineer for a federal contracting company since January 2016. He was previously granted access to classified information in approximately 2010, and access to sensitive compartmented information in 2011 in connection with his service in the U.S. Marine Corps between December 1995 and September 2012. He completed his most recent security clearance application on October 5, 2021. He disclosed three delinquent accounts which he attributed to financial difficulty he experienced related to the Covid-19 pandemic. The background investigation revealed six additional delinquent accounts, totaling \$45,350. (Tr. 16-19; GE 1-3)

Between 2016 and 2019, Applicant's job required frequent international travel. While on travel he earned between \$1,500 and \$3,000 in overtime pay and per diem in addition to his regular income. In 2015, he purchased a home. In 2018, he met his current wife while working on assignment Peru. When they became a couple, Applicant assumed responsibility for her rent, approximately \$735 per month (USD), in addition to his mortgage. (Tr. 25, 34, 68)

The couple married in December 2019. He paid for the wedding, largely using consumer credit. After their marriage, she did not have the immigration status required to live with Applicant in the United States. As a result, he assumed financial responsibility for all her living expenses in Peru. Because they did not live together, she would often meet Applicant at his work locations abroad. In March 2020, Applicant was

on assignment in Colombia when the Covid-19 lockdown began. He was required to return to the United States. Because Peru closed its borders, his wife could not return home and had to remain in Colombia. Between March 2020 and June 2020, Applicant had financial responsibility for his wife's financial obligations in Peru, her housing and living expenses in Columbia, as well as his living expenses. Because he was not traveling, he paid these obligations on his base salary, which was \$99,000. (Tr. 21, 34, 67-71)

When Applicant's wife, who worked in the beauty industry, returned to Peru, she remained unable to work during the pandemic. He would visit her as often as possible. After she became pregnant, Applicant paid her prenatal and labor and delivery expenses out-of-pocket, totaling \$6,000. He continued to work with an immigration attorney to secure the immigration status his wife required to immigrate to the United States. He believes he incurred approximately \$2,000 in legal expenses. She immigrated to the United States in September 2023. (Tr. 22, 24, 29, 37, 41, 74)

Between March 2020 and September 2023, Applicant supported multiple households, and struggled to pay his financial obligations. He stopped paying his consumer credit accounts and incurred the delinquent debt alleged in the SOR. He engaged a credit repair company to help him rehabilitate his finances. He did not provide a copy of the contract with the company describing the statement of work. It appears that Applicant wrote settlement offer letters to the creditors alleged in SOR ¶¶ 1.a and 1.b. He testified that the creditors did not respond. In October 2021, he entered into a settlement agreement with the creditor in SOR ¶ 1.e (\$5,502) to make 76 payments to resolve the debt. He did not provide any proof of payments. The credit reports in the record do not show any reduction of the balance owed. (Tr. 21-24, 43-66,73)

Since 2019, his income has increased from \$96,000 to \$108,000. He also receives disability income from the Department of Veterans Affairs. After paying his recurring obligations, he does not have much disposable income. He has not made any payments toward any of the other alleged debts. (Tr. 32-33, 71; AE A-D).

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 \$45,350 on six delinquent debts. The following financial considerations disqualifying condition applies:

AG ¶ 19(a) an inability to satisfy debts; and

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

Applicant’s financial problems were caused by events beyond his control – the unexpected economic impact of the Covid-19 pandemic and the four years it took his wife to immigrate to the United States after their marriage in 2019. However, since his finances stabilized with his return to full travel schedule, increases in salary, and the reunification of his family since his wife’s immigration to the United States, he has not demonstrated that he acted responsibly to repay his creditors. Although he claims to have retained a credit repair company, he did not provide any evidence of the work done on his behalf. The alleged debts remain unpaid, and Applicant did not present a plan for their repayment.

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.f:	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