



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



In the matter of:)	
)	
)	ISCR Case No. 12-06266
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

07/18/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant has demonstrated financial rehabilitation and reform by filing his outstanding 2009 and 2010 federal and state income tax returns, timely filing his 2011 through 2013 federal and state income tax returns, and entering into a payment plan with his creditor to resolve his delinquent accounts. Clearance is granted.

Statement of the Case

On March 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

¹ This case is adjudicated 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). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing. The Government submitted its written case on May 8, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 31, 2014, and responded timely. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 7 and the documents submitted by Applicant are admitted as Applicant's Exhibits (AE) A through F.² All exhibits were admitted without objection. The case was assigned to me on June 25, 2014.

Findings of Fact

Applicant, 49, works as a supply technician for a federal contractor. Applicant has worked as a federal contractor since 2003, when he retired from the military after 20 years of service. Applicant has lived and worked outside the United States continuously since 2005.³

The SOR alleges and Applicant admits that he failed to file his federal and state income tax returns as required for the 2009 through 2011⁴ tax years (§ 1.a); that he owes approximately \$18,500 for two delinquent credit card accounts to Creditor A (§§ 1.b and 1.c.); and that he lost his home to foreclosure (§1.d). Applicant completed his security clearance application in December 2011. According to the credit report obtained by the Government that same month, Applicant maintained a positive credit history, experiencing occasional 30-day late payments between December 2009 and October 2011. In December 2011, all of his accounts were current and in good standing.⁵

At the time Applicant completed his security clearance application, his marriage was unraveling. On his security clearance application, Applicant reported being unable to obtain the information requested about his parents-in-law because his wife would not give it to him. He also reported he did not timely file his 2010 federal and state income tax returns because he believed that his wife filed joint returns on their behalf. He later learned that she filed her taxes using the "married filing separately" status.⁶

In May 2012, Applicant fell behind on the two credit card accounts to Creditor A. By December 2012, Creditor A charged off both accounts. In August 2012, Applicant's

² Applicant submitted duplicate copies of some of the exhibits, which are included in the record, but not admitted into evidence.

³ GE 5.

⁴ Although the Applicant admits that he failed to file his federal and state income taxes as required for the 2011 tax year, it is unclear what information served as the basis of this allegation. Based on the record, specifically AE B, Applicant timely filed his 2011 federal and state income tax returns in February 2012.

⁵ GE 3,5,7.

⁶ GE 3, AE A.

wife stopped paying the mortgage on their home, Applicant asked his wife to retain a real estate agent and attempt to sell the home before the mortgager foreclosed on the property. She declined and attempted to sell the property on her own. In December 2012, Applicant's wife filed for divorce. The mortgager foreclosed on the couple's home in January 2013. Their divorce was finalized in February 2013. Under the terms of the divorce, Applicant is required to pay child support and uninsured health care expenses for his daughter until she turns 24 years old and to pay half of his military retirement to his ex-wife.⁷

Applicant has taken steps to resolve the issues alleged in the SOR. He filed his 2009 and 2010 federal and state income tax returns using the "married filing separately" status in February 2012. He has since filed his federal and state income returns on time. In March 2014, Applicant established a payment plan with Creditor A to resolve the two credit card accounts alleged in the SOR. He pays Creditor A \$100 weekly, which is equally divided between the two accounts. To date, he has paid approximately \$1,800 toward the resolution of these debts. After the mortgager foreclosed on Applicant's home in January 2013, it was eventually sold for \$125,000. According to Applicant's May 2014 comprehensive credit report, at the time of the foreclosure Applicant owed \$111,516 on the mortgage.⁸

Applicant's May 2014 credit report offers the only information about Applicant's current finances. He has not accumulated any additional delinquent debt and has not opened a consumer credit account since December 2011. With exception of the two charged-off credit cards alleged in the SOR (¶¶ 1.b and 1.c), all of Applicant's other open consumer credit accounts are current and in good standing.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(c), 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 access to classified information will be resolved in favor of national security." In reaching this

⁷ AE A, E – F.

⁸ AE A-E.

⁹ GE 6, AE E.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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.

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

Financial Considerations

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”¹⁰ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹¹ Furthermore, “failure to . . . meet 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 information.”¹²

The SOR alleges that Applicant is indebted to Creditor A for two accounts totaling \$18,500 and that he lost his home to foreclosure in January 2013. These allegations are supported by the record,¹³ establishing the Government’s *prima facie* case.¹⁴ Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.¹⁵ The SOR also alleges that Applicant failed to file his 2009 and 2010 federal and state income tax returns, as required. Applicant admits this allegation.¹⁶ As a U.S. citizen working abroad, Applicant’s income was subject to federal income tax. His gross income exceeded \$3,650, the minimum gross income requirement for married tax

¹⁰ AG ¶ 18.

¹¹ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹² AG ¶ 18.

¹³ GE 3, 5, 7.

¹⁴ GE 8-10; GE 3.

¹⁵ AG ¶¶ 19(a) and (c).

¹⁶ GE 3, 5.

payers filing separately for the 2009 and 2010 tax years.¹⁷ Because he was required to file federal tax returns for those years, Applicant's state of residency, State 1, also required him to file a state income tax return for those years.¹⁸ As a result, Applicant's failure to meet his basic obligation to the Government to file his federal and state income taxes, as required, is disqualifying.¹⁹

However, Applicant has submitted sufficient information to mitigate the security concerns raised by his finances. Applicant's financial problems were limited to the four-year period his marriage deteriorated and failed. Before and after his divorce he has maintained a favorable credit history.²⁰ Applicant's financial problems are an aberration and do not reflect negatively on his current security worthiness.²¹ Additionally, Applicant has provided evidence that his financial problems are under control.²² He filed his outstanding 2009 and 2010 federal and state income tax returns two years before the issuance of the SOR.²³ He has timely filed his federal and state income tax returns since 2011. With the finalization of his divorce in February 2013, Applicant's finances have stabilized. Although he is now required to pay child support and half of his retirement income to his ex-wife, Applicant's credit reports show that he pays his bills on time and that he has not incurred any additional debt.²⁴ Applicant has also entered into a payment plan with his creditor to resolve his two delinquent credit cards accounts,²⁵ showing a good-faith effort to re-pay his creditors.²⁶

After reviewing the record, I have no doubts about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). While the Government is rightly concerned about the security risks attendant to Applicant's indebtedness and failure to timely file his federal and state income tax returns in 2009 and 2010, as required, his conduct must be weighed against the circumstances causing the financial problems. Applicant's financial problems were caused by marital discord that ultimately led to his divorce. There is no

¹⁷ Hearing Exhibit (HE) I: IRS Publication 54: Tax Guide for U.S. Citizens and Resident Aliens Abroad, Chapter 1: Filing Information (2009, 2010). (The publication in its entirety is available at www.irs.gov.)

¹⁸ HE II: GA Department of Revenue, Form IT-511: Individual Income Tax 500 and 500 EZ Forms and General Instructions: Filing Requirements (2009, 2010). (The publication is available in its entirety at www.dor.ga.gov.)

¹⁹ AG ¶ 19(g).

²⁰ GE 7, AE E.

²¹ AG ¶ 20(a).

²² AG ¶ 20(c).

²³ AE B.

²⁴ GE 6; AE E.

²⁵ AE C.

²⁶ AG ¶ 20(d).

evidence in the record indicating that Applicant engaged in impulsive or frivolous spending or that he was living beyond his means. Nor is there any indication that Applicant was engaged in some other behavior tending to suggest financial irresponsibility, poor self-control, or an inability to properly handle and safeguard classified information. Finally, there is nothing in the record to suggest that Applicant has been anything less than forthright and candid about his financial issues. When viewed as a whole, the record - particularly Applicant's December 2011, February and May 2014 credit reports - is consistent with Applicant's explanations regarding his financial issues. Ultimately, the record supports the finding that Applicant has demonstrated financial rehabilitation and reform in the aftermath of his divorce.

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.d:	For Applicant

Conclusion

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge