



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



In the matter of:)
)
) ISCR Case No. 12-08081
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant failed to mitigate the financial considerations concerns raised by his \$39,000 of unresolved delinquent debt. Clearance is denied.

Statement of the Case

On December 3, 2014, the 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.² The Government submitted its written case on March 23, 2015. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant, who received the FORM on April 2, 2015. He did not respond. The case was assigned to me on May 26, 2015. I admitted the items attached to the FORM as Government's Exhibits (GE) 1 through 9, without objection.

Findings of Fact

Applicant, 39, has worked for a federal contractor since February 2012. He is seeking a security clearance for the first time. On his security clearance application, submitted in March 2012, Applicant disclosed his failure to file state income tax returns between 2008 and 2010. He also disclosed several delinquent accounts. The ensuing investigation confirmed Applicant's failure to file federal and state income tax returns during the aforementioned years and his indebtedness to 11 creditors for approximately \$39,000.³

Applicant claims that his financial problems began when he and his wife experienced periods of unemployment. After quitting a job that he felt required too much travel in April 2010, Applicant was unemployed for eight months. He was also unemployed for three months in 2008 and two months in 2005. Applicant returned to full-time employment in November 2010 and has since been employed without interruption. The record does not indicate specific dates for Applicant's wife's unemployment. Applicant attributes his failure to file his federal and state income tax returns between 2008 and 2010 to not having all of the W-2 forms necessary to do so.⁴

Applicant admits all but two of the debts alleged in the SOR, specifically SOR ¶¶ 1.d (\$506) and 1.i (\$1,346). Applicant claims that the accounts alleged in SOR ¶¶ 1.c (\$538) and 1.d are duplicates. Although the accounts have the same date of last payment, they were opened under different account numbers, three years apart. Applicant also denies the account alleged in SOR ¶ 1.i, a judgment obtained by a creditor in 2006, stating that he is unfamiliar with the account and did not attend any court proceedings regarding a delinquent debt. He was made aware of the debt during his April 2012 subject interview. Applicant informed the investigator that he would investigate the debt and resolve it if the account proved to be a legitimate debt. Applicant has not provided any documentation to establish a legitimate basis for disputing that he is not responsible for the alleged debt. Although Applicant admitted that he owes the debt alleged in SOR ¶ 1.j (\$1,055), the account is simultaneously reported as being current and delinquent on GE 7, the most recent credit report in the record. Because of the conflicting information, I resolve the conflict in Applicant's favor.⁵

² GE 4.

³ GE 5.

⁴ GE 4, 6.

⁵ GE 6-9.

The remaining debts alleged in the SOR remain unresolved. Applicant claims to be making payments toward the debts alleged in SOR ¶¶ 1.a and 1.b for a state tax lien and a student loan, respectively. However, he did not provide any documentation to corroborate his claims. Nor are his claims supported by the record. The most recent credit report in the record, GE 7, dated March 2015, shows no change in the account balance for the state tax lien alleged in SOR ¶ 1.a (\$4,186), and an increase in the account balance for the debt alleged in SOR ¶ 1.b, now \$32,408 from the \$30,594 alleged in the SOR. In his answer to the SOR, Applicant states that he intends to repay his delinquent accounts. Not only did Applicant fail to produce any evidence of debt repayment, he also failed to produce any evidence to indicate that his outstanding federal and state income tax returns have been filed.⁶

According to a personal financial statement Applicant completed in March 2014, he and his wife are employed. After paying their recurring expenses and consumer credit accounts, which totals approximately \$11,000 in addition to the delinquent debts alleged in the SOR, they have disposable income of approximately \$23.⁷

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 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

⁶ GE 4-9.

⁷ GE 6.

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁸

The SOR alleges that Applicant owes approximately \$39,000 in delinquent debt. The allegations are supported by the record, establishing the Government’s *prima facie* case.⁹ Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.¹⁰ Although Applicant’s financial problems may have been caused by events beyond his control, it is not enough to mitigate the financial considerations concerns. Since obtaining steady employment in 2008, Applicant has not acted responsibly to resolve his delinquent debt. He has not shown a good-faith effort to reduce his indebtedness or that his finances are under control. Applicant has not received financial counseling. While Applicant may well be able to meet his recurring monthly living expenses, this does not resolve the security concerns raised by his history of financial problems or unresolved delinquent debts. Applicant’s financial problems are ongoing and unresolved. None of the financial mitigating conditions apply.

Based on the record, doubts remain about Applicant’s ability to properly handle and safeguard classified information. Ultimately, Applicant failed to meet his burdens of production and persuasion. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, mitigate the financial concerns, or establish evidence of financial rehabilitation. The security concerns raised in the SOR remain. Following *Egan*¹¹ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

⁸ AG ¶ 18.

⁹ GE 4-9.

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ *Navy v. Egan*, 484 U.S. 518 (1988).

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.i, and 1.k:	Against Applicant
Subparagraph 1.j.	For Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge