



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



In the matter of:)	
)	
)	ISCR Case No. 12-10537
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2016

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 has a history of financial problems dating back to early adulthood. However, he has made reasonable efforts to resolve his delinquent debts given his circumstances. Clearance is granted.

Statement of the Case

On June 19, 2015, 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 continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his 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 timely answered the SOR and requested a hearing. On December 29, 2015, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.² Department Counsel provided documents as requested.³ At the hearing, convened on January 14, 2016, I admitted Government's Exhibits (GE) 1 through 6 and Applicant's Exhibits (AE) A through C, without objection. After the hearing, Applicant submitted AE D through H, which were also admitted without objection.⁴ I received the transcript (Tr.) on January 22, 2016.

Findings of Fact

Applicant, 36, has worked for a federal contractor as an aircraft egress mechanic since 2008. He served in the Air Force from 2001 to 2007 and was granted a security clearance. Applicant completed his most recent security clearance application in April 2012, disclosing several delinquent accounts. The ensuing investigation revealed, and the SOR alleges: that Applicant filed for Chapter 13 bankruptcy protection in May 2013 (SOR ¶ 1.a); that he filed for Chapter 7 bankruptcy protection in February 2004 (SOR ¶ 1.b); and, that Applicant failed to pay his federal income taxes for 2010 (SOR ¶ 1.c).⁵

Applicant married his first wife when he was 19 year old. He enlisted in the Air Force in 2001. From 2001 to 2004, he was also the sole source of income for the household, because his wife was in nursing school. In 2002, Applicant's sister died unexpectedly and Applicant helped cover her final expenses. By the end of 2004, Applicant's was a two-income household with two small children. Despite living in base housing, Applicant and his wife were not earning enough money to meet all of their financial obligations. They decided to file for Chapter 7 bankruptcy protection because they believed it provided them with the best opportunity to reestablish their financial footing. Applicant claims that he and his wife did not live lavish lives and did not accumulate debt on frivolous items. The couple filed for bankruptcy protection in February 2004 and received a discharge in June 2004.⁶

After the bankruptcy, Applicant's finances remained stable until approximately 2008. In 2007, Applicant completed his military service and moved to another state. He was unemployed for four months before accepting a temporary job, earning \$12 per hour. His wife also experienced a decrease in pay in their new location. As a result, they began to accumulate debt once again. Applicant relocated again for his current job because it paid \$27 per hour, or approximately \$60,000 annually. In their new location, Applicant's wife was also able to earn a higher salary. Together, they earned a joint income of approximately \$150,000. Applicant earned \$60,000 and his wife earned

² The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

³ The discovery letter, dated November 30, 2015, is appended to the record as HE II.

⁴ Correspondence regarding Applicant's post-hearing submission is appended to the record as HE III.

⁵ Tr. 20; GE 1-6.

⁶ Tr. 21-22, 28-32; GE 3.

\$90,000. With their increased income, they began to work on rehabilitating their finances.⁷

In 2009, Applicant and his wife separated, and divorced in early 2010. In the divorce, Applicant agreed to pay marital debts accumulated in his name. After the divorce, Applicant could not continue to pay all of his expenses on his income alone and he began to accumulate debt again. In 2010, Applicant filed his federal income tax using the single status. He owed a \$2,600 tax liability. In 2011, Applicant made \$900 in payments on the tax liability. The remaining amount was satisfied by the capture of his 2011 and 2012 federal tax refunds.⁸

In 2011, Applicant learned that his girlfriend was pregnant. He decided to begin saving money for the costs of another bankruptcy petition. Unable to do so, Applicant borrowed the money he needed from his mother. He filed for Chapter 13 bankruptcy protection in May 2013, seeking relief from approximately \$146,000 in secured debt and \$30,000 in unsecured debt. The secured debt consisted of the \$109,000 mortgage on his marital home, \$4,000 in homeowners' association dues, and two vehicles totaling \$33,000. Applicant was able to sell the home in July 2015. Applicant's share of the proceeds from the sale went to his Chapter 13 plan. He was also able to sell one of the cars. The unsecured claims were for 10 consumer credit accounts. Applicant claims that the credit cards were not used for unnecessary expenses, but were used mostly after his separation, as he tried to make ends meet on his reduced household income. Under his repayment plan, Applicant agreed to pay the trustee a total of \$25,896, with monthly payments beginning in June 2013. Since then, Applicant has made 31 timely payments under the plan, totaling over \$7,000. The bankruptcy petition will be discharged in 2018.⁹

Applicant now lives with his girlfriend and their young child. He currently earns \$80,000 annually. He is current on his recurring obligations, including his child support payments for his two older children. After paying his bills each month, Applicant has approximately \$600 in disposable income. He believes that he has learned a lot about himself and his finances as a result of his most recent bankruptcy. He wishes to rehabilitate his finances so that he is better able to provide for his children as they get older. In February 2016, Applicant took a series of finance classes with an emphasis on budgeting and understanding credit.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

⁷ Tr. 22-23, 33-34.

⁸ Tr. 23, 26, 34-36; AE D.

⁹ Tr. 23, 27, 36, 38; GE 2; AE A.

¹⁰ Tr. 19-20, 26, 40-42, 44-45; AE B, E.

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(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 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

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."¹¹ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant filed for Chapter 7 bankruptcy protection in 2004, that he failed to pay his 2010 federal income taxes, and that he filed for Chapter 13 bankruptcy protection in 2013. The record establishes a *prima facie* case that Applicant had a history of not meeting his financial obligations and that he demonstrated an inability to pay his bills.¹² At 19, Applicant became financially responsible for himself and his wife. However, his decision to file for Chapter 7 bankruptcy protection was reasonable for a financial fresh start at 25. The financial decisions he made during those early years of his adulthood and marriage are not indicative of his current security worthiness.¹³

Applicant's most recent financial problems were caused by the dissolution of his marriage in 2010, an event beyond his control. His decision to resolve his debt through a Chapter 13 bankruptcy payment plan was a responsible one, given the nature of the debt.¹⁴ Applicant has disposed of 82% of the secured debts in the bankruptcy petition, the marital home (\$109,000) and a car (\$11,000), paying the proceeds from the sale of the home into the payment plan. Since filing the petition, Applicant has made 31 timely payments under the plan. With his debts being resolved through bankruptcy and his recent completion of personal finance classes, Applicant's finances appear to be under control.¹⁵ While Applicant did pay his 2010 federal income tax liability late, he resolved the debt by 2012, three years before the SOR was issued. There is no further indication that Applicant has either failed to file his federal tax returns or pay any federal tax liability since then.

After reviewing the record, I have no doubts about his suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant has not exhibited behaviors that are indicative of an inability to properly handle or safeguard classified information. While his financial record is not perfect, he is taking steps toward rehabilitation through his Chapter 13 payment plan.

¹¹ AG ¶ 18.

¹² AG ¶¶ 19(a) and (c).

¹³ AG ¶ 20(a).

¹⁴ AG ¶ 20(b).

¹⁵ AG ¶ 20(c).

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, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge