



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



In the matter of:)	
)	
)	ISCR Case No. 12-12035
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr. , Esq., Department Counsel
For Applicant: *Pro se*

06/28/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant incurred delinquent debt after his first marriage dissolved in 2008. He has demonstrated a good-faith effort to resolve his delinquent accounts. Clearance is granted.

Statement of the Case

On July 27, 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 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 January 14, 2016. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He submitted a response on February 1, 2016. The case was assigned to me on March 22, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 8, without objection. The documents provided by the Applicant are admitted as Applicant's Exhibits (AE) A through G, without objection.

Findings of Fact

Applicant, 37, has worked for a federal contractor since November 2006. He previously served in the U.S. Navy from December 1997 until he was medically discharged in June 2006. On his security clearance application, dated August 2012, Applicant disclosed two delinquent personal loans. The ensuing investigation revealed, as alleged in the SOR, that Applicant is indebted to six creditors for \$28,900. Applicant admits each allegation.³

Applicant's financial problems began when his first marriage dissolved in July 2008. He assumed all of the marital debt in addition to having to pay child support. Applicant obtained the four personal loans alleged in SOR ¶¶ 1.a -1.b and 1.e -1.f in an effort to consolidate his debts. The account alleged in SOR ¶ 1.c is for a jewelry store account. The debt alleged in SOR ¶ 1.d is for a cell phone. Applicant became overwhelmed trying to maintain his living expenses, his loan payments, his child support obligations, and the expenses he incurred visiting his daughter every weekend. All of the alleged debts became delinquent between 2009 and 2012. Applicant remarried in 2012. At some point, Applicant was awarded primary custody of his daughter. His ex-wife does not pay child support. In January 2015, Applicant was involved in a car accident, sustaining serious injuries after his car was hit by a drunk driver. He was out of work for more than three months recovering from his injuries. Applicant returned to work in the spring 2015. In 2015, Applicant also incurred legal expenses as he continued to litigate custody issues with his ex-wife.⁴

Applicant claims that he began contacting his creditors when he started experiencing financial problems, but they were unwilling to work with him. In 2008, Applicant began working with a credit consolidation company to resolve his delinquent debts. He was able to consolidate ten accounts under his plan, but was unable to afford the \$560 monthly payment. In August 2012, he contacted a second credit consolidation service, which lowered his monthly payment to \$482. He began participating in this program in October 2012. It is unclear when and why Applicant stopped participating in the program. Recently, Applicant has been able to negotiate payment plans and settlements with his creditors. He has negotiated payment plans for SOR ¶¶ 1.b (\$2,876) and 1.c (\$2,395) for monthly payments of \$89 and \$239, respectively. He has

² GE 3.

³ GE 5-7.

⁴ GE 2, 4, 8.

also paid the cell phone account alleged in SOR ¶ 1.d (\$135). In addition to these SOR debts, Applicant is paying a non-SOR account for \$1,751. In May 2015, the creditor charged off the account alleged in SOR ¶ 1.a (\$18,113), but provided Applicant with two settlement offers. Unable to afford either offer, the debt remains unresolved. The debts alleged in SOR ¶¶ 1.e (\$2,492) – 1.f (\$2,950) were charged off by the creditor in 2009. There is nothing to indicate that the creditor is actively making attempts to collect on these accounts.⁵

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 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 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

⁵ GE 2; AE A-G.

questions about an individual's reliability, trustworthiness and ability to protect classified information."⁶

The SOR alleges that Applicant owes \$28,900 in delinquent debt. The record supports a finding that Applicant had a history of not paying his bills and that he had an inability to do so.⁷ However, Applicant provided sufficient information to mitigate the financial concerns. Applicant's financial problems were caused by events beyond his control: the dissolution of his marriage; his assumption of all of the marital debt; and, his child support obligation. Applicant acted responsibly under the circumstances by staying in contact with his creditors and attempting to renegotiate repayment terms.⁸ He also attempted to repay his creditors through two debt-consolidation plans in 2012. Applicant has also shown that he is making a good-faith effort to resolve his delinquent accounts. He has established payment plans for the accounts alleged in SOR ¶¶ 1.b and 1.c and a \$1,700 non-SOR account. He has also resolved the debt alleged in SOR ¶ 1.d.⁹

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 SOR ¶¶ 1.a, 1.e - 1.f remain unresolved, this is not the most important factor in assessing Applicant's security worthiness. A person is not required to establish resolution of every debt alleged in the SOR, to make payment on all delinquent debts simultaneously, or pay the debts alleged in the SOR first. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan.¹⁰ Applicant's actions show his commitment to resolving his delinquent accounts and I am confident he will continue to do so as he is able. Furthermore, Applicant financial problems were not the result of irresponsible or reckless behavior, but from his efforts to manage his financial responsibilities after his divorce. Applicant has not exhibited behaviors that are indicative of an inability to properly handle or safeguard classified information.

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.f:	For Applicant

⁶ AG ¶ 18.

⁷ AG ¶¶ 19(a) and (c).

⁸ AG ¶ 20(b).

⁹ AG ¶ 20(d).

¹⁰ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

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