



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



In the matter of:)	
)	
)	ISCR Case No. 14-03069
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

05/22/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant has failed to mitigate the financial considerations and personal conduct concerns raised in the SOR. The \$30,000 of delinquent debt alleged in the SOR remains unresolved. Applicant’s claim that he accidentally omitted derogatory financial information from his January 2014 security clearance application is not credible. Clearance is denied.

Statement of the Case

On July 30, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were

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.

unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on December 22, 2014. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on February 11, 2015. He did not respond. The case was assigned to me on April 27, 2015. I admitted the items attached to the FORM as Government's Exhibits (GE) 1-6,³ without objection.

Findings of Fact

Applicant, 48, has worked for a federal contractor since August 2011. He is seeking a security clearance for the first time. The SOR alleges that Applicant owes \$30,000 on 17 delinquent accounts, the majority of which are for medical expenses. Applicant admits responsibility for each of the alleged accounts.⁴

In October 2008, Applicant was laid off after 12 years of employment. He received a severance package that included three months of continued medical coverage. Between 2009 and 2011, Applicant worked sporadically at lesser paying jobs that did not provide adequate medical insurance for his family. As a result, Applicant began to incur delinquent debt related to medical care for himself and his family. Simultaneously, Applicant's wife, who is a small business owner, began to feel the effects of the national economic downturn. Her business lost clients, which resulted in a further decrease in Applicant's household income. As a result of these changes, Applicant began to have difficulty meeting his financial obligations.⁵

In January 2014, Applicant completed a security clearance application. In response to the question about his financial record, Applicant did not disclose any derogatory information. In his Answer to the SOR, Applicant claims that the omission was accidental, explaining that he accidentally submitted the security clearance application before he had a chance to input his derogatory financial information. Applicant claims that he disclosed the mistake to his human resources (HR) manager the next day. Based on his conversations with the HR manager, Applicant believed that he would be given an opportunity to correct the form. Applicant claims that he did not hear anything else about his application until he was contacted by an investigator for an

² GE 3.

³ When the Government submitted its FORM, it did so with an incomplete copy of GE 5. To correct the error, Department Counsel sent the complete document to Applicant on May 5, 2015, and afforded Applicant seven days to review the document and make any corrections. Department Counsel also gave Applicant the opportunity to provide any additional information in response to the FORM. As of May 14, 2015, Applicant had not responded. Correspondence related to this issue is appended to the record as Hearing Exhibit (HE) I.

⁴ GE 4, 6.

⁵ GE 3-4.

interview. Before the interview began, Applicant claims that he told the investigator that he accidentally submitted an incomplete form before being confronted with information about his delinquent accounts.⁶

Applicant's subject interview took place in February 2014. The interview summary contains the following information about the omissions on Applicant's security clearance application:

The Subject did not list delinquent account information since he had [not] been in contact with account holders or was unaware of information on his credit history. The Subject agreed he had some delinquent accounts but was unable to recall all the accounts.

The investigator then confronted Applicant with the derogatory accounts found in Applicant's credit report.⁷

In his answer to the SOR, Applicant stated that as his delinquent debt mounted, he and his wife consulted a bankruptcy attorney. However, they decided against resolving their debt through bankruptcy. Instead, Applicant plans to sell off assets and withdraw funds from his retirement account to pay the debts. Currently, all of the debts alleged in the SOR remain unresolved.⁸

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

⁶ GE 3.

⁷ GE 5.

⁸ GE 3.

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 questions about an individual’s reliability, trustworthiness and ability to protect classified information.”⁹

The SOR alleges that Applicant owes approximately \$30,000 in delinquent debt. The allegations are supported by the record, establishing the Government’s *prima facie* case.¹⁰ Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.¹¹ 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 2011, Applicant has not acted responsibly to resolve his delinquent debt. While Applicant has stated an intention to pay his creditors, he has not made any efforts to do so. The record does not support a finding that Applicant has received financial counseling or that his finances are otherwise under control. Accordingly, none of the financial mitigating conditions apply.

Personal Conduct

An applicant’s lack of candor or dishonesty raises questions about his reliability, trustworthiness, and his ability to protect classified information. Of special interest in any adjudication is an applicant’s failure to provide truthful and candid answers during the security clearance process.¹² Such is the case here. The SOR alleges that Applicant intentionally failed to disclose derogatory financial information on his January 2014 security clearance application. Specifically, Applicant failed to disclose information about accounts that had been turned over to collection agencies in the last seven years or debts that were 120 days past due at the time he completed the security clearance

⁹ AG ¶ 18.

¹⁰ GE 3, 6.

¹¹ AG ¶¶ 19(a) and (c).

¹² AG ¶ 15.

application.¹³ Applicant claims that the omission was accidental; however, the record indicates otherwise.

In his answer to the SOR, Applicant detailed an elaborate story about his actions after he accidentally submitted his security clearance application without the derogatory financial information. He claimed to have reported his mistake to his employer and to have informed the investigator of his omissions before being confronted with his derogatory financial information. However, he did not provide any evidence to corroborate his story. Furthermore, the statement Applicant provided to the background investigatory is contradictory. The inconsistent statements and lack of corroboration raise questions about Applicant's credibility that must be resolved in favor of the Government. Accordingly, I find that Applicant intentionally falsified his security clearance application.¹⁴ I also find that none of the personal conduct mitigating conditions apply. Applicant's omission cannot be considered minor. The omission and Applicant's failure to take responsibility for his actions raise unresolved issues about his security worthiness.

Based on the record, I have doubts about Applicant's ability to properly handle and safeguard classified information. The security concerns raised in the SOR remain. Applicant failed to establish a record of financial rehabilitation or reform. He also failed to mitigate concerns about his trustworthiness and reliability. Following *Egan*¹⁵ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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.q:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

¹³ GE 4.

¹⁴ AG ¶ 16(a).

¹⁵ *Navy v. Egan*, 484 U.S. 518 (1988).

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