



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



In the matter of:)
)
) ISCR Case No. 14-00213
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for a security clearance to work in the defense industry. Although he has addressed two of the debts alleged in the Statement of Reasons (SOR), Applicant's mortgage remains \$88,000 in arrears and is currently unresolved. He has not acted responsibly or in good faith to resolve his delinquent debts. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DOD Directive,¹ on February 28, 2014, DOD issued a Statement of Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the basis for the action under the financial considerations guideline.

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 June 30, 2014, and sent a complete copy of the file of relevant material (FORM), which included a brief and eight documents, to Applicant. He received the FORM on July 15, 2014, and was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit a response to the FORM, nor did he object to the attachments, which are admitted as Government's Exhibits (GE) 1 through 8. The case was assigned to me on October 8, 2014. I opened the record to allow the parties to submit additional information. Applicant submitted Applicant's Exhibits (AE) A through D,² which were admitted without objection. Department Counsel offered an updated credit report, which is admitted as GE 9, without objection.³

Evidentiary Issues

The Government's brief presents information summarizing the Report of Investigation (ROI) completed as a result of Applicant's background investigation. The ROI is not in the record.⁴ In a footnote of the brief, the Government directs Applicant to lodge any objection to the ROI summary in his reply to the Government's brief.⁵ There is no indication that Applicant was provided a copy of the ROI, as required, which prevents him from authenticating or formulating his objection, if any, to the Government's summary of its contents. Based on the Directive ¶ E3.1.20, the summarized ROI is inadmissible and will not be considered.

Findings of Fact

Applicant, 52, works as an engineer test specialist for a federal contractor, Company A. Applicant began his career in this field with another federal contractor, Company B, in 2001. He remained with Company B until he was laid off in December 2011. After five months of unemployment, Applicant began working with his current employer as a subcontractor in May 2012 and was hired as a Company A employee in September 2013. According to Applicant, he accepted a 22% decrease in salary when he began working for Company A. Divorced in 1993 after seven years of marriage, Applicant remains single. He is the father of two adult children.⁶

While working for Company B between 2001 and 2011, Applicant claims that his salary and overtime compensation placed him on solid financial footing. However,

² AE A: Applicant's Letter, undated; AE B: Creditor Letter re: SOR ¶ 1.a, dated October 20, 2014; AE C: Creditor Letter re: SOR ¶ 1.c, dated October 22, 2014; AE D: Loan Modification Status Letter re: SOR ¶ 1.b, dated October 27, 2014.

³ The parties responses regarding evidentiary issues and additional documentation is appended to the record as Hearing Exhibit (HE) I.

⁴ FORM at 4-6.

⁵ FORM at 4.

⁶ GE 4; AE A.

during Applicant's last few years with Company B, he did not earn overtime, which caused him to experience financial problems. In January 2008, Applicant stopped paying the mortgage on the home he has owned since 2003. When Applicant was laid off in December 2011, he was in the process of obtaining a mortgage loan modification. According to Applicant, the lender denied the modification request upon learning of his unemployment. Applicant did not reapply for a loan modification until early 2014. The lender assigned his application to a Case Manager in March 2014. According to an October 27, 2014 letter, the lender has received Applicant's financial package. However, the lender did not offer a timeline for the expected resolution of Applicant's mortgage loan modification application. The most recent credit report in the record, dated October 17, 2014, shows that Applicant's mortgage, which is \$88,000 in arrears with an outstanding balance of approximately \$167,000, is in foreclosure (SOR ¶1.b).⁷

In addition to the mortgage loan, Applicant has two other delinquent accounts totaling approximately \$2,000. In January 2008, a creditor obtained a judgment against Applicant for \$1,484 (SOR ¶1.a). In March 2014, Applicant made a \$300 payment toward the account and agreed to pay the creditor \$50 monthly until the judgment was satisfied. An October 2014 letter from the creditor confirms that Applicant has complied with the terms of the payment plan. The other delinquent account is for a \$604 medical bill incurred in August 2011 (SOR ¶ 1.c).⁸ In October 2014, Applicant paid the debt in full.⁹

The record contains very little information about Applicant's current finances. In addition to his mortgage loan, Applicant has only two open consumer credit accounts. Each has a zero balance. There is nothing in the record regarding Applicant's recurring financial obligations or any assets he may own.¹⁰

Policies

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

⁷ GE 3, 6, 9; AE A, D.

⁸ The debt alleged in SOR ¶1.d is a duplicate of the debt alleged in ¶ 1.c. GE 5, 6, 9 show that the debt is identified by the same account number. Accordingly, I find in Applicant's favor on allegation ¶ 1.d.

⁹ GE 3; AE B - C.

¹⁰ GE 5 – 6, 9.

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.

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

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 is indebted to three creditors for approximately \$90,000, the largest debt being a delinquent home mortgage, which Applicant has not paid since January 2008. The record contains sufficient evidence to establish the Government’s *prima facie* case, that Applicant has a history of being unable or unwilling to pay his debts.¹²

¹¹ AG ¶ 18.

¹² AG ¶¶ 19(a) and (c).

Applicant claims that his financial problems were caused by events beyond his control and that he acted responsibly in light of them. However, Applicant's assertions are not supported by the record. While Applicant may have experienced a decrease in income with the loss of overtime pay while working for Company B, it does not follow that this prevented Applicant from paying his mortgage. Without overtime, Applicant continued to earn his full-time base pay. Furthermore, Applicant does not mention any other event that occurred in the years before or after he made his last mortgage payment that negatively impacted his ability to meet his financial obligations. According to Applicant's credit reports, he does not have any other material recurring financial obligations or excessive consumer debt. Based on the record, Applicant's failure to pay his mortgage for the past eight years is inexplicable.

Although Applicant receives credit for making payments toward the outstanding judgment (SOR ¶1.a) and paying his delinquent medical account (SOR ¶ 1.c), this is not enough to support a finding that Applicant has made a good-faith effort to resolve his delinquent debts. Applicant did not take any steps to address his three delinquent accounts until threatened with the impending loss of his security clearance. Despite returning to work in May 2012, Applicant waited until after he received the February 2014 SOR to reapply for a mortgage loan modification. He also waited until after receiving the SOR to make any arrangements to resolve his outstanding judgment. Applicant did not revisit the home modification or take steps to resolve the delinquent medical debt until October 2014, when I opened the record to receive additional documentation.

Absent evidence to the contrary, I find that his financial problems are recent and ongoing. Given the lack of information about Applicant's current finances, I am unable to determine that Applicant's finances are under control or that his financial problems are unlikely to recur. Consequently, Applicant's unresolved delinquent mortgage and his years of inaction toward resolving it and his other delinquent debts continues to cast doubt on his current reliability, trustworthiness, and good judgment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant failed to meet his burdens of production and persuasion. An applicant is expected to provide information regarding his finances.¹³ The paucity of information Applicant submitted about his finances, past and present, failed to mitigate the doubts and concerns his finances raise regarding his current security worthiness. Following *Egan*¹⁴ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

¹³ See ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

¹⁴ *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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c - 1.d	For Applicant
Subparagraph 1.b	Against Applicant

Conclusion

In light of all of the circumstances, it is 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