



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



In the matter of:)
)
) ISCR Case No. 14-01068
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, 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’s financial problems were not the result of irresponsible or reckless behavior that indicates an inability to properly handle and safeguard classified information. He has made a good-faith effort to resolve his \$41,000 of delinquent debt, and has established a record of financial rehabilitation and reform. Clearance is granted.

Statement of the Case

On April 30, 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. The Government submitted its written case on March 20, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the SOR allegations. Applicant received the FORM and responded timely. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 5 and 7, and the documents submitted by Applicant are admitted as Applicant's Exhibits (AE) A through K, without objection. The case was assigned to me on May 21, 2015.

Evidentiary Rulings

The Government offered as GE 6, Applicant's December 2013 subject interview, which is part of the background report of investigation (ROI). Because the document has not been authenticated, as required under Directive ¶ E3.1.20, it is not admitted.

Findings of Fact

Applicant, 53, has worked for a federal contractor since March 1982. This is his first application for a security clearance. Applicant disclosed derogatory financial information on his October 2013 security clearance application. The ensuing background investigation confirmed that Applicant is indebted to four creditors for approximately \$41,000.²

Applicant attributes his financial issues to multiple periods of short-term disability experienced by him and his wife. According to their respective employers, Applicant and his wife have missed at least 17 and 6 months of work, respectively, between 2005 and 2013. During these periods unemployment, Applicant and his wife received short-term disability benefits at 66% of their usual pay. Applicant estimates that he and his wife lost \$45,000 in income. Their finances were further stressed because each was still required to make payments on their respective 401(K) loans while receiving their disability benefits.³

Since 2012, Applicant has taken steps to resolve his delinquent accounts. He has paid the debt alleged in SOR ¶ 1.a (\$1,944). Applicant's mortgage, SOR 1.b, which was \$11,000 past due when the SOR was issued, has been rehabilitated through a mortgage modification program and is current. Applicant began making payments on the debt alleged in SOR ¶ 1.c in 2012, which had a balance of \$9,800. By the time the SOR was issued in April 2014, Applicant had reduced the balance to \$9,400. As of March 2015, the balance due on the account was \$7,900. In June 2014, Applicant also entered into a payment arrangement for the debt alleged in SOR ¶ 1.d (\$18,310). As of March 2015, the outstanding balance was \$17,409.⁴

² GE 4-5, 7.

³ AE A-B, J-K.

⁴ AE F-I.

In addition to the payments on the debts alleged in the SOR, Applicant pays \$350 bi-weekly to repay a \$39,000 401(K) loan. The balance on the loan is \$19,000 and has 52 remaining payments. Applicant's wife is also repaying a 401(K) loan. She has 111 bi-weekly payments of \$115 remaining. Aside from the accounts alleged in the SOR, Applicant has a favorable credit history. He has not incurred any additional delinquent debt.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

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."⁶ Similarly, an individual who is financially irresponsible may also be

⁵ AE A, D-E.

⁶ AG ¶ 18.

irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant is indebted to four creditors for approximately \$40,000. The debts are substantiated by the record.⁷ Applicant demonstrated both a history of not paying his bills and an inability to do so.⁸ However, Applicant has submitted sufficient information to mitigate the security concerns. His financial problems were caused by events beyond his control. He has acted responsibly by taking steps to resolve his delinquent account long before applying for a security clearance in October 2013. Applicant has made a good-faith effort to resolve his delinquent debts. He has paid the debt alleged in SOR ¶ 1.a and has rehabilitated his mortgage, SOR ¶ 1.b, to current status. He has reduced the debts alleged in SOR ¶¶ 1.c and 1.d by \$1,800 and \$900, respectively, while repaying other debts not alleged in the SOR. Applicant has demonstrated a track record of financial reform and rehabilitation. His financial problems are under control.⁹

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). It is true, that at the current rate, it will take Applicant years to resolve his delinquent debt. However, the Appeal Board has held that, "an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct;" that is, actions which evidence a serious intent to effectuate the plan.¹⁰ Applicant has done so. While it cannot be denied Applicant still owes a great deal of money, this fact does not ultimately resolve the question of an individual's security worthiness. Applicant's financial problems are not indicative of financial irresponsibility, poor self-control, lack of judgment, or an unwillingness to follow rules and regulations.

⁷ GE 4-5, 7.

⁸ AG ¶¶ 19(a) and (c).

⁹ AG ¶¶ 20(b) – (d).

¹⁰ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).

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.d:	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