



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



In the matter of:)
)
) ISCR Case No. 14-01382
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: G. Lance Nalder, Esq.

08/27/2015

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 made a good-faith effort to resolve the two debts alleged in the SOR. To date, he has paid over \$19,000 toward a federal tax debt and resolved a \$127 collection account. Clearance is granted.

Statement of the Case

On June 4, 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 February 18, 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 4, and the documents submitted by Applicant are admitted as Applicant's Exhibits (AE) A through I, without objection. The case was assigned to me on July 15, 2015.

Findings of Fact

Applicant, 58, has worked for several different federal contracting companies since 2003 and has held a security clearance since then. He has worked for his current employer since 2014. Applicant completed his most recent security clearance application in December 2013. He disclosed his failure to timely pay federal income taxes in 2011. The investigation revealed that Applicant has a federal tax lien for \$17,000 and one collection account for \$127. Both debts are alleged in the SOR and Applicant admits responsibility for them.²

On his security clearance application, Applicant indicated that he fell behind on his estimated taxes in 2011, resulting in a tax liability. He also reported a tax lien on his home for failing to pay his taxes on time. Applicant explained the unpaid taxes were caused by an IRS audit that resulted in the assessment of an additional federal income tax liability. Applicant appealed the decision and negotiated a \$100 monthly payment agreement in July 2010. He has complied with the terms of the payment agreement, at times paying several months of payments in advance of their due dates. When he submitted his answer to the SOR in July 2014, Applicant provided documentation showing that he had paid \$9,200 under the agreement, as required. In his response to the FORM, Applicant provided documentation showing continued payments under the plan, totaling \$10,000. Altogether, Applicant has paid \$19,000 toward his outstanding federal tax debt.³

As for the collection account alleged in the SOR, Applicant was not initially aware of the past-due account. Upon learning of the debt, Applicant paid it in full. He submitted documentation from the creditor indicating that the account was satisfied along with his answer to the SOR.⁴

Aside from the two debts alleged in the SOR, the credit reports in the record show that Applicant has a favorable credit history with accounts dating back to 1990.⁵

² GE 2-4.

³ GE 2, AE A-G.

⁴ GE 2.

⁵ GE 3-4.

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

The SOR alleges that Applicant is indebted to two creditors for over \$17,000. The majority of the delinquent debt is for an outstanding federal tax debt. The debts are substantiated by the record, which supports a finding that Applicant has a history of not meeting his financial obligations, in particular, his federal tax obligations.⁷ However, he has submitted sufficient information to mitigate the alleged concerns. Applicant has

⁶ AG ¶ 18.

⁷ AG ¶ 19(c).

demonstrated a good-faith effort to resolve his delinquent debt.⁸ Since 2010, Applicant has complied with the terms of his IRS payment arrangement, paying over \$19,000 toward the payment of his outstanding federal tax debt. He has also satisfied a \$127 collection account. Given the information in the record, Applicant's tax problems are under control.⁹ His tax issues seem to be limited to a short period and the record does not contain any evidence to indicate the problems are ongoing.

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). Applicant has presented a solid record of financial rehabilitation and reform. Furthermore, there is nothing in the record to suggest ongoing habits or conduct indicative of irresponsibility or unreliability that reflect negatively on Applicant's current security worthiness. Clearance is granted.

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.b:	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

⁸ AG ¶ 20(d).

⁹ AG ¶ 20(c).