



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



In the matter of:)
)
) ISCR Case No. 14-01566
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Although Applicant’s financial problems were caused by events beyond his control, he has not taken any steps to resolve his \$61,000 in outstanding delinquent debt. Clearance is denied.

Statement of the Case

On June 25, 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 October 6, 2014. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on July 7, 2014, and filed his response timely.

In his response to the FORM, Applicant indicated that he wished to be represented by legal counsel. In an email dated December 1, 2014, Department Counsel explained to Applicant that he did not have a right to legal counsel appointed by the Government, but that he could retain counsel on his own. Department Counsel also asked Applicant to verify that he did not want to have an in-person hearing. Applicant confirmed that he wished to proceed, *pro se*, with an administrative determination, submitting his case to Department Counsel with the hope that the documentation he provided would satisfy Department Counsel's concerns. Department Counsel responded with a final email, clarifying his role in the process and informing Applicant that his case would be assigned to an administrative judge who would review the documents submitted by the parties and issue a written decision.²

The case was assigned to me on January 14, 2015. I admitted GE 1-8 and Applicant's Exhibits (AE) A-GG, without objection.³

Findings of Fact

Applicant, 62, has worked for a federal contractor since 1975. He has held a security clearance since 2003. On his September 2013 security clearance application, Applicant disclosed derogatory financial information. The ensuing investigation revealed that Applicant owes \$61,000 on 14 delinquent accounts.⁴

Applicant's financial problems began in 2006 when his daughter, then 22 years old, was diagnosed with an aggressive, degenerative disease. Applicant paid her medical expenses out of pocket until she qualified for health insurance under Medicare. By 2012, Applicant's daughter became bedridden and he assumed responsibility for her care and that of his granddaughter, who is nine years old. As the sole source of income for his family, Applicant became unable to pay his expenses as well as those of his daughter and granddaughter. Placing their needs above his own, Applicant allowed some of his financial obligations to become delinquent so that he could pay his daughter's medical expenses, which are not entirely covered by Medicare.⁵

Applicant admits that he owes each of the debts alleged in the SOR. Although he is unable to repay his creditors at this time, he believes he will be able to resolve his

² Government's Exhibit (GE) 8.

³ Department Counsel's memorandum regarding Applicant's FORM response is appended to the record as Appellate Exhibit (AP Ex.) I-II.

⁴ GE 4 – 5.

⁵ GE 3.

delinquent debt at some point in the future, without seeking help or seeking bankruptcy protection.⁶

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 questions about an individual's reliability, trustworthiness and ability to protect classified information."⁷ The Government does not have to prove that an applicant poses a clear and present danger to national security,⁸ or that an applicant poses an imminent threat

⁶ GE 3; AE A.

⁷ AG ¶ 18.

⁸ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.⁹

The SOR alleges and Applicant admits that he owes approximately \$61,000 in delinquent debt. Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.¹⁰ The record contains ample evidence to establish that Applicant's financial problems were caused by events beyond his control – his daughter's debilitating illness. However, Applicant has not provided any evidence to show that he has acted responsibly in light of his circumstances, that he is making a good-faith effort to address his delinquent debt, or that his finances are otherwise under control. The Appeal Board has repeatedly held that an applicant is not required to be debt free or have a plan for paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances and develop a reasonable plan of repayment accompanied by conduct showing intent to effectuate the plan.¹¹ Although Applicant has expressed a willingness to repay his debt, he has not provided any plan for doing so or shown that he has taken any steps to repay his creditors.

I have considered the nine-factor whole-person concept,¹² but the favorable information in the record is not enough to mitigate the security concerns raised by Applicant's financial issues. An adverse decision in this case is not a finding that Applicant does not possess the good character required of those with access to classified information. The record indicates the opposite. Applicant's decision to become his daughter and granddaughter's primary care giver speaks volumes about his good character. However, even good people can pose a security risk because of facts and circumstances not entirely under their control.¹³ While a favorable decision is not warranted at this time, Applicant may well present persuasive evidence of financial rehabilitation and reform in the future.

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
Subparagraph 1.a – 1.n:	Against Applicant

⁹ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989).

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009)(citations omitted).

¹² AG ¶ 2(a).

¹³ ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); See also *Department of Navy v. Egan*, 484 U.S. 518, 527-28 (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