



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



In the matter of:)	
)	
)	ISCR Case No. 14-02147
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the financial considerations concerns raised by his history of financial problems. He demonstrated neither a good-faith effort to resolve his debts nor financial rehabilitation or reform. Clearance is denied.

Statement of the Case

On October 2, 2014, the Department of Defense (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 or continue Applicant's security clearance and recommended

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.

that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² At the hearing, convened on June 3, 2015, I admitted Government's Exhibits (GE) 1 through 10 and Applicant's Exhibits (AE) A through B, without objection. After the hearing, Applicant submitted AE C through F, which were also admitted without objection.³ I received the transcript (Tr.) on June 11, 2015.

Findings of Fact

Applicant, 40, has worked as a locksmith for his employer, a federal contractor, since February 2010. He completed a security clearance application in February 2013, disclosing one Chapter 13 bankruptcy petition dismissed in 2009 and 13 derogatory accounts. The ensuing investigation revealed that Applicant filed five Chapter 13 bankruptcy petitions between 1996 and 2008, all of which were dismissed. The investigation also revealed that Applicant is indebted to 25 creditors for approximately \$50,700.⁴

Applicant admits that his financial problems began during his first marriage, which lasted from 1995 to 2012. He allowed his ex-wife to handle the household finances despite evidence of her repeated acts of financial mismanagement. According to Applicant, his ex-wife routinely wrote bad checks and served jail time for the offense in approximately 2006 and 2009. He also claims that his ex-wife opened credit accounts in his name without his knowledge, specifically SOR ¶¶ 1.j, 1.k, 1.m, 1.n, 1.q, 1.t, 1.u, 1.x, 1.y, 1.aa, and 1.bb, totaling approximately \$6,800. Applicant admittedly did very little to limit her access to their bank account. Instead, he often gave her signed, blank checks and entrusted her to pay the household bills. She often misappropriated the money.⁵

In this way, Applicant and his wife accumulated significant delinquent debt. To deal with the debt, Applicant and his wife jointly filed for Chapter 13 bankruptcy protection. They filed their first application in 1996, shortly after getting married. The petition was dismissed for failure to make the plan payments. They filed Chapter 13 petitions again in 1999, 2000, 2003, and 2009. Each was dismissed within six months of filing. When they divorced in 2012, their divorce decree did not assign or divide responsibility for the marital debt. As a result, Applicant carried the delinquent debt into

² The Government's discovery letter, dated October 15, 2014, is appended to the record as Hearing Exhibit (HE) I.

³ The e-mails regarding the admissibility of the Applicant's exhibits are included in the record as HE II.

⁴ Tr. 16-18; GE 1-10.

⁵ Tr. 19-21, 26-27, 50-51; Answer.

his second marriage. Applicant testified that he did not learn of the full extent of his ex-wife's financial misdeeds until his April 2013 subject interview.⁶

Applicant remarried in 2012. He and his wife manage their household finances together. They are able to meet their recurring expenses and do not rely on consumer credit. Applicant intends to pay his delinquent debts when he is able, but with only \$300 to \$400 in disposable income each month, he cannot afford to do so now. He hopes to generate additional income from a gun restoration business he recently started.⁷

By the time of the hearing, all but two of the alleged debts remained unresolved. The bank holding the loans alleged in SOR ¶¶ 1.o (\$911) and 1.p (\$36,105) charged off the accounts and has forgiven the loans. However, the bank permitted the Applicant and his ex-wife to keep the two cars purchased with loan alleged in SOR ¶ 1.p. After the hearing, Applicant paid off the debts alleged in SOR ¶¶ 1.g – 1.i, 1.s, and 1.v, totaling \$600. Applicant has also negotiated a payment plan scheduled to begin in July 2015 for the debt alleged in SOR ¶ 1.z (\$483). He has not filed disputes with the credit agencies or a police report regarding the accounts he considers to be fraudulent.⁸

At work, Applicant is performing well. He has received several awards and has been recognized for his customer service and technical skills. He is current on all of his security training. Applicant's supervisor testified at the hearing and is aware of Applicant's financial problems. He has not witnessed Applicant engage in any behavior indicative of a security risk. He finds Applicant to be a hardworking, reliable, and security conscious employee.⁹

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 known as the "whole-person concept." The administrative judge must consider all

⁶ Tr. 27-28, 52-55; GE 6-10.

⁷ Tr. 35, 39, 41-43, 45-48; AE D.

⁸ Tr. 22-24, 43-45; AE B-C.

⁹ Tr. 57-64; AE A, E-F.

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 contained in the record.

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

Guideline F, Financial Considerations

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”¹⁰ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹¹ The Government does not have to prove that an applicant poses a clear and present danger to national security,¹² or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show

¹⁰ AG ¶ 18.

¹¹ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹² See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.¹³

Applicant has a long history of financial problems dating back almost 20 years. During Applicant's first marriage, his ex-wife's mismanagement and Applicant's failure to deal with the problem resulted in the accumulation of delinquent debt and multiple dismissed petitions for Chapter 13 bankruptcy protection. The majority of the alleged accounts remain unresolved because Applicant does not have the means to resolve them. These facts are enough to establish the government's *prima facie* case that Applicant has both a history of not paying his debts and an inability to do so.¹⁴

The record does not contain sufficient evidence to rebut the financial considerations security concerns. Applicant's financial problems were not caused by events beyond his control, but the result of Applicant's and his first wife's financial habits. Applicant has not made a good-faith effort to repay his creditors. Neither the decision of the creditor holding SOR ¶¶ 1.o and 1.p to forgive the \$37,000 in delinquent debt nor Applicant's post-hearing payments of six of the SOR debts is indicative of the required good-faith effort. These actions do not establish a positive history of debt repayment or debt reduction. He has not challenged or disputed the accounts he believes were fraudulently opened by his ex-wife.

Applicant did not present evidence of financial rehabilitation or reform. His current ability to live within his means and more responsible use of consumer credit do not resolve the issue. Because his delinquent debt is unresolved, his financial problems are ongoing and, consequently, his finances are not under control. He has not sought financial counseling or provided any assurances that he would not treat his finances with a lack of care.

After reviewing the record, I have 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). The favorable information in the record, regarding Applicant's work performance, is not sufficient to mitigate the financial concerns raised in the SOR.

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.g – 1.i, 1.s, 1.v, 1.z:	For Applicant

¹³ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹⁴ AG ¶¶ 19(a) and (c).

Subparagraphs 1.a-1.f, 1.j-1.r,
1.t -1.u, 1.w-1.y, 1.aa -1.dd:

Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge