



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



In the matter of:)
)
) ISCR Case No. 10-01350
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2012

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 has over \$19,000 in unresolved delinquent debt. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

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.

Reasons (SOR) explaining that it was unable to find that it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR, which detailed the reasons for the action under the financial considerations guideline, recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on December 2, 2011. 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 security concerns. Applicant received the FORM on December 14, 2011. He did not object to the items appended to the Government's brief. These items are admitted as Government's Exhibits (GE) 1 through 8. Applicant timely submitted a response, which is admitted as Applicant's Exhibits (AE) A and B without objection. The case was assigned to me on January 23, 2012.

Findings of Fact

Applicant is a 40-year-old employee of a federal contractor. Married 18 years, he is the father of three teenaged children. He served two tours of duty in the Army from 1990 to 1995 and from 2002 to 2005, respectively. Since being honorably discharged from military service, he has worked as a federal contractor on a series of overseas assignments between September 2006 and at least September 2009.²

The SOR alleges that Applicant is indebted to 26 creditors for approximately \$21,470. He denies each of the debts alleged in the SOR. In his security clearance application, Applicant attributed his financial problems to a series of circumstances: his wife incurring debt in his absence; the malfeasance of a family member Applicant trusted to manage his finances while he worked overseas; and his wife needing medical treatment at a time the family was not covered by medical insurance. Despite his SOR denials, Applicant believes that he is responsible for the delinquent debt he has incurred. He believes it is more responsible to pay the debt himself than to file for bankruptcy protection.³

In April 2010, Applicant enrolled in a debt repayment program to resolve his delinquent debt. However, after taking money management classes at his church, he withdrew from the program and instituted a debt repayment plan of his own. He claims that he has resolved all of the debts alleged in the SOR. The record establishes that Applicant has resolved the debts alleged in paragraphs 1.c., 1.d., 1.f., and 1.v.⁴

² GE 3.

³ GE 3.

⁴ GE 3, 5, 8; AE A.

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

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Both disqualifying conditions apply. Although Applicant denies the debts alleged in the SOR, the Government's evidence establishes a *prima facie* case against him. Since at least 2005, Applicant has accumulated over \$21,000 in delinquent debt, the majority of which, based on the record, remains unresolved.

None of the mitigating conditions available under AG ¶ 20⁵ apply. Applicant presented insufficient evidence to mitigate the security concerns alleged in the SOR. He provided no evidence to corroborate his claims regarding the origins of his financial problems, the resolution of the accounts alleged in the SOR, or the rehabilitation of his finances. In light of the sparse evidence provided by Applicant, I find that his financial problems are recent and ongoing. Also, given the paucity of information available, I am unable to determine that Applicant's financial problems are unlikely to recur. Consequently, Applicant's unresolved delinquent debts continue 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. In doing so, I have also considered the whole-person concept. Although I view Applicant's payment of four SOR debts and his desire to resolve all of his indebtedness favorably, the limited information available has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance. Overall, the record evidence leaves me with questions and doubts

⁵ 20(a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

20(b) The conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

20(c) The person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

20(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

20(f) The affluence resulted from a legal source of income.

about Applicant's eligibility and suitability for a security clearance. Following *Egan*⁶ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. Accordingly, this case is decided against the Applicant.

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.b., 1.e., 1.g.-1.u., 1.w.-1.z.:	Against Applicant
Subparagraphs 1.c., 1.d., 1.f., 1.v.:	For Applicant

Conclusion

In light of all of the circumstances, 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

⁶ *Navy v. Egan*, 484 U.S. 518 (1988).