



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-02829

Appearances

For Government: D. Michael Lyles, Esq., Department Counsel

For Applicant: *Pro se*

July 28, 2011

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. The SOR alleges that Applicant owes approximately \$39,000 in delinquent debt for 38 accounts, 21 of which are for medical expenses. Applicant's delinquent debt resulted from events beyond his control. He has resolved 37 of his 38 delinquent accounts. He is making payments on the remaining unresolved account. Applicant demonstrated a good-faith effort to resolve his delinquent debt. He has also shown that his finances are under control. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 10, 2010, the Defense Office of Hearings and Appeals (the Agency) 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

reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the factual basis for the action under the Guideline F (Financial Considerations) adjudicative guideline.

Applicant answered the SOR and requested a hearing. The case was initially assigned to another administrative judge in February 2011 and transferred to me on June 6, 2011. The hearing proceeded as scheduled on June 7, 2011. Government's Exhibits (GE) 1 through 7 and Applicant Exhibits (AE) A through T were admitted without objection. I received the Transcript (Tr.) on June 15, 2011.

Findings of Fact

Applicant is employed as a welder with a defense contractor. He is 48 years old and has been married twice. He is the father of one child with his second wife. In May 2009, he completed a security clearance application seeking access to classified information for the first time. His background investigation revealed a history of financial problems.²

Applicant is a below-the-knee amputee, the result of a tractor accident in 1986. After learning to walk again with the use of a prosthetic leg, he returned to work full-time. However, complications with his amputated leg made it hard for him to work consistently. By the end of 1999, Applicant believes he missed an average of three months of work each year. In 2000, Applicant stopped working and began receiving full disability benefits from the Social Security Administration (SSA). His monthly \$1,700 disability check was his family's only source of income. Applicant struggled to make ends meet. He often used credit cards to pay his expenses.³

Applicant's finances were also aggravated by being medically underinsured. While receiving disability benefits, Applicant did not have sufficient health insurance to cover all of his family's medical expenses. As a result, he incurred over \$25,000 in debt for eight prosthetic legs he used over the years. He also incurred \$6,454 in other medical debt that he could not pay. In addition his wife, who has serious mental health disorders, is unable to work. Her medication typically costs \$150 per month, which Applicant could not afford on his disability income.⁴

In addition to the medical expenses, Applicant's wife's disorders have caused her to engage in financially destructive behavior. At times when her medication had become ineffective or she chose not to comply with her prescription regime, she had episodes during which she would disappear for days at a time and often writing bad checks from the couple's joint bank account. During one episode she wrote \$7,000 in bad checks.

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaces the guidelines in Enclosure 2 to the Directive.

² GE 1 – 7.

³ Tr. 65-67.

⁴ SOR; Tr. 48, 68-69, 73-74.

These bad-check sprees often resulted in criminal charges. To avoid his wife spending time in jail, Applicant would pay the fees necessary to keep her from facing prosecution. Although he kept his wife out of jail, the unexpected expenditures depleted his meager financial resources. On two occasions, once in 2000 and another in 2005 or 2006, Applicant attended financial counseling offered by his local government to help him control his finances, but because his income was not sufficient to cover his expenses, he could not do much at the time to rehabilitate his finances. He even tried to supplement his income by working part-time as a greeter at a large retail store.⁵

In 2007, Applicant decided to return to work as a welder. He accepted a position working abroad for a government contractor. He found that living in warmer climates caused fewer complications with his leg and allowed him to work consistently year round. Earning an annual salary in excess of \$100,000, working overseas provided him the first opportunity to address his delinquent debt. However, he became a geographical bachelor leaving his wife and son, who was 14 at the time, stateside. Prior to starting his employment, Applicant terminated his disability benefits.⁶

The first year he worked abroad, Applicant relied on his wife to manage the family finances. She had not had an episode in almost a year and he believed that she could handle the responsibility. During that year he believed his wife was managing the couple's finances without issue. It was not until he returned home for a vacation a year later that he learned otherwise. He also discovered that SSA continued to pay his disability benefits for almost 10 months after he terminated them, which resulted in an overpayment of benefits of more than \$17,000. By the time, he learned of the overpayment, his wife had spent the money. Upon returning to his duty location overseas, Applicant resumed control of his finances and began resolving his delinquent debt. First, he repaid the \$25,000 related to his eight prosthetic legs. He then began repaying the delinquent accounts identified during his background investigation and eventually alleged in the SOR.⁷

The SOR alleged that Applicant owed 38 delinquent accounts totaling approximately \$39,000. He admits three of the debts: the \$17,906 debt to the Social Security Administration caused by the overpayment of his disability benefits (¶ 1.v.), a \$2,179 account owed to CACH LLC/Providian Bank (¶ 1.y.), which is a duplicate of ¶ 1.b., and a \$23 debt to an unidentified medical creditor (¶ 1.ii.). He has entered into a payment plan with the Social Security Administration (1.v.). To date, he has paid \$6,500 toward the balance and has agreed to pay \$500 each month until the debt is resolved. He has paid the CACH LLC/Providian Bank accounts. He believes the medical debt alleged in ¶ 1.ii. was paid as part of a lump sum payment to two different medical providers with whom Applicant had several delinquent accounts. However, the account is not listed separately in the documentation Applicant submitted, but the \$23 account is immaterial to the total amount of delinquent debt alleged. Applicant denies the 35

⁵ GE 3; Tr. 24, 31, 57-59, 71.

⁶ Tr. 27, 38, 67-68.

⁷ Tr. 26, 38, 40-42, 61-62, 69.

remaining accounts. He has provided documentation showing that accounts, ¶¶ 1.a. - 1.t., 1.w. - 1.hh, and 1.jj - 1.mm, have been resolved through payment-in-full or settlement. Applicant successfully disputed the debt alleged in ¶ 1.u. and requested the creditor remove the entry from his credit report.⁸

In the midst of resolving his own delinquent debt, Applicant assumed financial responsibility for his brother's eight-person household in January 2010. In order to accommodate everyone, Applicant had to undertake significant renovations to his small home. Since 2010, Applicant has paid \$40,000 towards the renovation. He pays cash for the construction costs. He does not use credit cards. Applicant actively monitors his finances. His recurring household bills are paid automatically each month. He has removed his wife's name from his checking accounts to prevent her from writing bad checks and now relies on his brother's help to run the large household in Applicant's absence.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 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.

⁸ AE A-T; Tr. 27-40, 42-46, 69-70.

⁹ GE 3; 25-26, 49-50, 53-54.

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

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Both disqualifying conditions apply here.

Applicant's financial problems began in the aftermath of his leg-amputation in 1986. His inability to work consistently between 1988 and 1999 adversely affected his finances. When he received disability benefits between 2000 and 2007, his monthly allotment was not sufficient to cover his living expenses and medical expenses causing him to rely on credit cards to make ends meet. In addition, he was medically underinsured. His financial problems were compounded by his wife's severe mental illness and her financially destructive behavior. The cumulative effect of these factors caused Applicant to incur \$39,000 in delinquent debt between at least 1988 and 2007.

Upon returning to full-time employment, Applicant began to address his delinquent debt. As a result, three of the following mitigating conditions available under AG ¶ 20 apply:

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; and

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

Applicant's financial problems are the result of two conditions beyond his control: his leg amputation in 1986 and his wife's mental illness. All of the delinquent debt Applicant accumulated over the years can be directly attributed to one condition or the other. Although he was unable to affect any appreciable change in his finances prior to his re-entering the workforce in 2007, Applicant acted responsibly in attending financial counseling courses to seek help. He also acted responsibly in trying to supplement his disability income with part-time employment. Since 2008, Applicant has taken control of his finances. He has also taken steps to protect his family finances from his wife's actions. Applicant demonstrated that he now has command over his finances. He is able to meet his expenses without relying on consumer credit. Most importantly, Applicant has also demonstrated a good-faith effort to resolve his delinquent debts. He has resolved 37 of his delinquent accounts and has entered into a payment plan with his largest creditor. Based on the evidence, I conclude that Applicant has mitigated the Guideline F concerns.

I have no reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person concept. Applicant has made significant personal sacrifice to financially support his family and repay his delinquent debt. Working overseas allows him to work consistently and financially support his family, but prevents him from caring for his wife and helping his son cope with his mother's illness. He has shown his commitment to financial rehabilitation by paying off an additional \$25,000 in debt not alleged in the SOR. His commitment is also evidenced by his decision to remove his wife's name from the couple's bank accounts, a decision necessary to protect his wife from criminal charges and the family's finances from the unexpected costs potentially associated with her episodes. Furthermore, Applicant has demonstrated that he is able to live within his means, even while supporting a 10-member household.

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.mm: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge