



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



In the matter of:)
)
) ISCR Case No. 11-00927
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

January 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. During a six-year period of underemployment, Applicant incurred \$44,481 in delinquent debt to four creditors and lost a rental property to foreclosure. He has demonstrated a track record of debt repayment and a willingness to resolve his delinquent debts. Furthermore, the unresolved delinquent debts do not increase Applicant potential vulnerability to exploitation, coercion, or duress. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons

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

(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 security guidelines known as Guideline F, financial considerations.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted their written case on September 9, 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 September 26, 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 10. Applicant did not submit a response. The case was assigned to me on November 23, 2011.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. Married, he is the father of six children between the ages of 13 and 23, all of whom live with Applicant. The SOR alleges that he is indebted to four creditors for approximately \$44,481. and that he lost a rental property to foreclosure in 2008. Applicant admits these allegations.²

His financial problems began in approximately 2002, when he was laid off from his job as an airline mechanic after September 11, 2001. For the next six years, Applicant was underemployed primarily working in his wife's business. Between February 2005 and October 2005, and again between 2006 and 2007, Applicant worked for a company in the aeronautics industry, but left the position when the company began experiencing problems. He returned to suitable employment in 2008, and started working with his current employer in April 2009. However, he has been on unpaid leave status since July 2009 as a result of this case. In April 2010, he was able to find a job with a temporary employment agency.³

During his periods of underemployment, Applicant relied on savings and income from his wife's business to support their family. By 2010, Applicant's wife liquidated over 70 percent of her business assets to meet the family-of-eight's living expenses. The couple plans to dissolve the business and use the cash generated from the sale of the remaining assets to support the family. Despite his financial difficulties, Applicant has been working to resolve his delinquent debt since 2009.⁴

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.

² GE 5.

³ GE 6, GE 7.

⁴ GE 7.

In connection with his security clearance investigation, Applicant had two interviews with an investigator from the Office of Personnel Management (OPM). During these interviews, Applicant discussed 13 delinquent debts. One of the delinquent debts discussed was the mortgage on Applicant's home, which appeared on his credit report as being 120 days and \$14,000 past due. By the time of the first interview in September 2009, the mortgage had been rehabilitated. According to his most recent credit reports, the mortgage is current. Applicant informed that investigator that he planned to resolve his smaller debts before addressing his larger debts. In response to interrogatories issued by DOHA in April 2011, Applicant provided documentation showing that he had resolved nine delinquent debts totaling approximately \$3,047. He also included documentation showing a \$400 payment towards the \$2,685 delinquent debt Credit Card 1 (SOR ¶ 1.e).⁵

In addition to the proof of payment of the nine delinquent accounts, he also provided documentation from Bank 1 (SOR ¶ 1.b.) and Bank 2 (SOR ¶ 1.c.) that these debts for \$31,406, and \$10,204, respectively, have been charged off. The letter from Bank 1 stated that the account, related to Applicant's foreclosed rental property, had been charged off in November 2007. Applicant believes that the foreclosure sale of the rental property satisfied any amount owed to the bank. Bank 2 reported to Applicant that his account with them had been closed. Prior to this letter, Applicant tried to negotiate a payment plan with the creditor to no avail. After Bank 2 rejected Applicant's offer of a payment plan, he decided to save money to make the creditor a lump-sum settlement offer in the future. The only debt Applicant did not provide any information on was the \$186 debt alleged in SOR ¶ 1.d.⁶

Applicant explains that his delinquent debts resulted from his inability to find suitable employment. He has not sought financial counseling. Nor has Applicant considered bankruptcy to discharge his delinquent debt because he considers this cheating. Income, not unwillingness, he explains has been the limiting factor in his ability to resolve his delinquent debts. Applicant appears to live within his means and has not accumulated any new debt.⁷

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

⁵ GE 6 – 9.

⁶ GE 7.

⁷ GE 6 -9.

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.

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.

The guideline notes two conditions that could raise security concerns under AG ¶ 19:

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

Both disqualifying conditions apply. After being laid off from his job in the airline industry, Applicant experienced underemployment between 2002 and 2008, which resulted in his accumulating delinquent debt and his subsequent inability to pay his creditors.

Of the mitigating conditions available under AG ¶ 20, two are applicable here:

(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; and

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

Applicant's financial problems were caused by events beyond his control – the economic downturn in the airline industry after September 11, 2001. During his years of underemployment, he did not have the means to pay his creditors having to focus on the needs of his large family. In light of his circumstances, he acted responsibly by beginning to address his delinquent debt when he had the income to do so. Of the 13 delinquent debts Applicant discussed in his OPM interviews, he has resolved nine and made payments toward one. Although his efforts have not resulted in the resolution of all of his delinquent debt, his lack of success does not equate to not acting responsibly. The evidence shows that Applicant has been attentive to the issue and opposed to approaching it with apathy or inattention.

Applicant has rehabilitated the mortgage on his primary residence, which was more than \$14,000 in arrears, to current status. He has paid or settled nine of the remaining delinquent accounts totaling approximately \$3,000. His payment of these non-SOR debts is relevant to an evaluation of extenuation or mitigation and for assessing his credibility.⁸ Applicant's conduct supports a finding that he has established a positive track record of repaying his delinquent debts. This history of resolving non-SOR debts coupled with his \$400 payment toward Credit Card 1 constitutes a good-faith effort to resolve his delinquent debt. The Appeal Board has held that, "an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his

⁸ See e.g., ISCR Case No. 09-06770 at 3 (App. Bd. Nov. 8, 2010).

circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct, that is actions which evidence a serious intent to effectuate the plan.”⁹ Applicant has done so. He has followed through on the plan he outlined to the OPM investigator to resolve his delinquent debts.

Considering his payment of his delinquent debts, the fact that the two largest debts in the SOR – ¶ 1.b. and ¶ 1.c. – remain unpaid is of little security significance. First, these debts were not the result of frivolous or irresponsible spending. Second, the unpaid status of these debts does not increase Applicant’s potential vulnerability for exploitation, coercion, or duress. It appears that neither creditor will accept payment on the accounts, nor does it appear that the debts are being actively collected by a third party. Given the letters Applicant received from each creditor indicating that the accounts were charged off, his belief that he no longer owes the debts, while incorrect, is not unreasonable under these circumstances.

Whole-Person Concept

Based on the evidence, I have no doubts or reservations about Applicant’s current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). While it cannot be denied that Applicant still owes a great deal of money, cases occasionally present themselves as requiring more than an assessment of just assets and liabilities. The fact the money is still owed does not ultimately resolve the question of an individual’s security worthiness.

While the Government is rightly concerned about the security risks attendant to Applicant’s indebtedness, its role is not to serve as a debt collector. An applicant’s indebtedness must be weighed against the circumstances causing the financial problems. Applicant’s financial problems were not the result of his living above his means or being financially overextended. His financial problems were caused by an event beyond his control and the unanticipated years of underemployment that followed. Furthermore, Applicant’s financial problems are not indicative of poor self-control, lack of judgment, or an unwillingness to pay his debt. In fact, he has demonstrated the opposite. Therefore, I conclude that Applicant has mitigated the security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

⁹ See e.g., ISCR Case No.08-06567 at 3 (App. Bd. Oct. 29, 2009).

Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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