



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



In the matter of:)
)
) ISCR Case No. 11-03164
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: Kettie E. McCormick, Esq.

03/29/2013

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 mitigated the security concerns raised by his history of financial difficulties and his \$29,200 in delinquent debt. He has demonstrated a good-faith effort to resolve his delinquent accounts and a positive track record of repayment. Clearance is granted.

Statement of the Case

On June 11, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators could not make the preliminary affirmative finding that it is

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.

clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on November 6, 2012. At the hearing convened on December 14, 2012, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through I, without objection. After the hearing, Applicant timely submitted AE J through R, which I admitted without objection. The Government's memorandum regarding the post-hearing submission is appended to the record as Hearing Exhibit (HE) 1. I received the transcript (Tr.) on December 27 2012.

Procedural Issues

SOR Amendment

Department Counsel moved to amend allegation ¶ 1.w. to correct the identity of the creditor. I granted the motion without objection from Applicant.

Notice Requirement

Applicant received less than 15 days written notice of the time and place of the hearing as required under Directive ¶ E.3.1.8. Applicant's counsel waived the notice requirement, but asked for permission to submit additional documentation after the hearing. Without objection from Department Counsel, I granted Applicant's request and the hearing proceeded as scheduled.

Findings of Fact

Applicant, 47, is employed by a federal contractor as an entry control specialist at a U.S. Air Force Base. Although his employer continues to sponsor his security clearance application, Applicant was laid off in October 2012. Since then, he has received unemployment compensation. He also works part-time as a firearms and self-defense instructor. Applicant is a veteran of the U.S. Army. He held a security clearance during his 10-year career without incident. Applicant is married to his third wife. They have no children together. Applicant has three children from his two previous marriages and a fourth child from another relationship.²

Applicant has a history of financial problems dating back to the late 1980s. Financial problems during his first and second marriages caused Applicant to file for Chapter 7 bankruptcy protection in April 1991 and again in November 2000. Both petitions were successfully discharged. Applicant cites misconduct by each of his former wives as the reason for the financial problems in both marriages. However, he also admits that he adopted a hands-off approach to his finances, deferring to his former wives on financial matters. After the dissolution of his second marriage in 2005, Applicant continued to experience financial difficulties related to underemployment and

² Tr. 59, 72, 112, 117-118; GE 1 - 2.

his significant child support obligations. Applicant, whose professional expertise is in law enforcement and security, lost an executive-level position in 2007. Since then he has been unable to secure comparable employment, which he attributes to his poor credit history – specifically a delinquent student loan account. Applicant believes that the derogatory credit information disqualified him from security-related positions for which he was otherwise qualified. In 2008, Applicant retained a law firm to help him address his delinquent accounts. Because the law firm did not produce any favorable results, Applicant terminated the relationship in September 2010.³

Applicant continued to struggle financially until he met his third wife in 2007. With her help, he has taken strides to rehabilitate his finances. Applicant and his wife first directed their attention to resolving Applicant's student loan and tax issues. Applicant stopped paying a federal student loan account because he believed his second wife fraudulently obtained student loans in his name. After three-and-a-half years of disputing the validity of the account, Applicant was able to show – with the help of a handwriting expert – that his second wife fraudulently consolidated \$26,000 of her loans into Applicant's student loan account. The account is currently in good standing. When Applicant met with his wife's tax preparer, he learned that he owed outstanding state and federal taxes. Through a payment plan, Applicant resolved his state tax debt in June 2012. He currently has a payment plan with the Internal Revenue Service (IRS) to pay his \$13,500 in outstanding federal taxes (§ 1.c).⁴

Applicant has also taken steps to resolve the other delinquent debts alleged in the SOR. In addition to the federal taxes, the SOR alleges that Applicant is indebted to 19 creditors for approximately \$15,700. Applicant has paid seven accounts (§§ 1.d-1.f, 1.m-1.o, and 1.w.) totaling \$1,308; and is participating in payment plans for another seven accounts (§§ 1.c, 1.g-1.h, 1.r., 1.t-1.v.). He devotes \$514 of his monthly household income to these payment plans each month. Currently, six accounts totaling \$10,600 remain unresolved because Applicant cannot verify the accounts. Using the creditor contact information provided in the comprehensive August 2010 credit report obtained by the Government, Applicant's wife called each of the three creditors alleged in §§ 1.l, 1.p and 1.q to establish payment plans. Each creditor informed her that they did not have an account in Applicant's name or with the account number listed in the credit report. The accounts do not appear on the three later credit reports in the record.⁵

Applicant admits that in 2003 he voluntarily surrendered a vehicle with the understanding that he would be responsible for any deficiency balance after the vehicle was sold at auction. Because he did not hear from the creditor again, he assumed that the sale of the vehicle covered the outstanding loan balance. When he started receiving collection calls for the \$6,600 deficiency balance alleged in § 1.i, Applicant disputed the validity of the debt. The dispute is noted on the August 2010 credit report obtained by the Government. The debt, which was initially reported as being delinquent in July 2010,

³ Tr. 31, 73-75, 80-82, 87, 90-91, 95, 99, 104, 116-117, 119-120; GE 2-4.

⁴ Tr. 28-34, 36, 51-53, 75-77, 101-105, 109-111; GE 2; AE A, E, F,H, O, R.

⁵ Tr. 37-43, 46-48, 50-51, 106; GE 5-7; AE A-D, I-P.

does not appear on the later credit reports in the record. The creditor alleged in ¶1.j is one of Applicant's current medical providers. According to the account summary provided by the medical provider, Applicant's account has a zero balance.⁶

Applicant and his wife are committed to resolving all of Applicant's delinquent accounts. Since at least 2007, Applicant has worked two jobs and his wife has worked as much overtime as possible to address the debts. In addition to Applicant's underemployment, the couple has also faced medical challenges that have affected their income. Applicant's wife suffered a back injury that kept her out of work between June and August 2012. Although she received some disability income, Applicant increased his hours to make up for the income his wife lost during her convalescence. In September 2012, Applicant suffered a mild stroke and he continues to experience lingering effects. Applicant has continued to honor his payment plans to his creditors since being laid off in October 2012.⁷

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 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 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.

⁶ Tr. 46, 63-65, 85-86, 109; GE 5-7; AE I, Q.

⁷ Tr. 54-57, 59, 78, 120.

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.”⁸ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.⁹ The Government does not have to prove that an applicant poses a clear and present danger to national security,¹⁰ or that an applicant poses an imminent threat 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.¹¹ Evidence of Applicant’s two discharged bankruptcy petitions and his \$29,200 in delinquent debt is sufficient evidence to establish his “history of not meeting financial obligations”¹² and his “inability to satisfy debts.”¹³

Although the Government has established its *prima facie* case against Applicant, the record also contains sufficient evidence to mitigate the security concerns. The financial problems Applicant experienced during his prior two marriages culminating in two Chapter 7 bankruptcies were not entirely beyond his control. However, the financial

⁸ AG ¶ 18.

⁹ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹⁰ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹¹ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹² AG ¶ 19(c).

¹³ AG ¶ 19(a).

problems incident to Applicant's years of underemployment were beyond his control.¹⁴ He acted responsibly by retaining a law firm to help him resolve his delinquent accounts, even though the relationship did not produce favorable results. With the help of his wife, Applicant's finances are under control.¹⁵ She has helped him develop better financial habits, which has enabled them to reduce his delinquent debts. Applicant has made a good-faith effort to resolve his indebtedness by paying off seven of the SOR debts and participating in payment plans to resolve another seven of the alleged accounts, including the \$13,500 federal tax debt.¹⁶ His efforts to contact the creditors alleged in ¶¶ 1.l, and 1.p-1.q using the comprehensive credit report provided by the Government in an attempt to establish payment arrangements also constitutes a good-faith effort to repay his debts. Applicant established that he had a reasonable basis for disputing the \$6,500 repossession deficiency (¶1.i). Because the creditor is no longer reporting the debt, it is reasonable to conclude that the dispute was successful.¹⁷ He also established that he is not responsible for the \$3,550 medical debt (¶ 1.j).

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). Applicant has established a meaningful track record of debt repayment, addressing both SOR and non-SOR debts. 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 circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.¹⁸ Having demonstrated such, Applicant's request for access to classified information is granted.

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.w:	For Applicant

¹⁴ See ¶ 20(b).

¹⁵ See ¶ 20(c).

¹⁶ See ¶ 20(d).

¹⁷ See ¶ 20(e).

¹⁸ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).

Conclusion

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

Nichole L. Noel
Administrative Judge