



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



In the matter of:)	
)	
)	ISCR Case No. 11-06161
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2013

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 has approximately \$129,000 in unresolved delinquent debt. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on June 22, 2012, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue

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.

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

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted its written case on September 29, 2012. 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 November 10, 2012. Applicant did respond to the FORM; accordingly, the items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 11. The case was assigned to me on January 25, 2013.

Findings of Fact

Applicant, a retired chief petty officer from Navy, has been employed by a federal contractor since January 2007. He has held a security clearance since he entered the Navy in 1983. Currently married to his second wife, he has two adult children from his first marriage, and two teenage stepchildren.²

The SOR alleges and Applicant admits that he is indebted to 14 creditors³ for approximately \$129,000 in consumer credit card debt.⁴ Applicant's financial problems began after his first marriage ended in divorce in 2004. According to the agreement Applicant made with his first wife, he assumed all of the marital debt. Applicant began to have trouble paying his bills when he retired from the Navy in 2007. In addition to accepting a civilian job earning less money, the Navy began deducting \$1,000 each month from his retirement checks to recoup \$12,000 in overpayments discovered during Applicant's separation audit. In response to his lower income, Applicant closed three of his major credit card accounts. He kept his consumer credit accounts current until the end of 2007, when he missed a payment due date on one of his credit cards, which caused the interest rate to jump from 3% to the 19% default rate. Unable to pay his debts, Applicant claims that he retained counsel and filed for Chapter 13 bankruptcy protection. Following the advice of his attorney, Applicant stopped making payment on his debts. Applicant did not provide any documentation to show that he actually filed for bankruptcy protection. Nor is there any indication on his credit reports to support this claim.⁵

² GE 4.

³ Based on the record, ¶ 1.m appears to have been alleged in error. Although Applicant admitted the debt, it does not appear on the credit reports provided by the Government in GE 6 through 11, nor is the debt discussed in Applicant's subject interview (GE 6), his DOHA interrogatory responses (GE 5-6), or his security clearance application. (GE 4)

⁴ The account in ¶ 1.g is delinquent in the amount of \$12,594, not \$22,253 as alleged.

⁵ GE 6.

Applicant states that he is trying to negotiate settlement offers with his creditors and that he has paid off \$13,000 in delinquent debts. However, he only provided evidence of one-time payments to three creditors totaling \$550. Applicant believes that his debt to the Navy Exchange was satisfied through garnishment, but he did not provide any corroborating documentation. To date, there is no evidence that any of the debts alleged in the SOR have been resolved. Applicant has not received any financial counseling. Applicant claims that his ability to repay his delinquent debts has been compromised because his wife has been unemployed since she separated from the Navy in 2011.⁶

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

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

⁶ GE 5-11.

funds.”⁷ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.⁸ The Government does not have to prove that an applicant poses a clear and present danger to national security,⁹ 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.¹⁰

Applicant owes over \$129,000 in delinquent debt. The allegations are supported by the record, establishing the Government’s *prima facie* case.¹¹ Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.¹² None of the financial considerations mitigating conditions apply. Applicant presented insufficient evidence to mitigate the security concerns. It is unclear how much of the SOR debt is from his first marriage and how much of the debt Applicant incurred after his 2004 divorce. It is also unclear what types of items, necessities or luxury, were purchased with the credit cards. Applicant provided no evidence corroborating his efforts to resolve his debts or rehabilitate 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 24-year military career and security clearance history favorably, these facts do not mitigate security concerns. Based on the limited information available, Applicant’s current financial situation does not merit a security clearance. Following *Egan*¹³ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

⁷ AG ¶ 18.

⁸ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

⁹ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹⁰ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹¹ GE 5-11; Answer.

¹² AG ¶¶ 19(a) and (c).

¹³ *Navy v. Egan*, 484 U.S. 518 (1988).

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.l, 1.n-1.o:	Against Applicant
Subparagraph 1.m:	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