



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



In the matter of:)
)
) ISCR Case No. 11-08274
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

01/23/2013

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. The possible tolling of the statute of limitations does not resolve the security significance of Applicant’s \$120,000 of unresolved delinquent debt. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 20, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

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 timely answered the SOR and requested a hearing. The case was assigned to me on October 2, 2012. At the hearing convened on December 5, 2012, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through Q, without objection. After the hearing, Applicant timely submitted AE 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 13, 2012.

Findings of Fact

Applicant, 47, has been employed by a federal contractor as an engineer since November 2010. Married for 23 years, he is the father of four children between the ages of 8 and 16. Applicant has spent most of his career working in the aerospace industry. He held a Top Secret security clearance from 1992 to 1995, without incident. In his current position he is considered a high performer and has received several performance-related commendations and financial awards. Applicant is active in his church community and devotes his free time to family activities.²

Until 2002, Applicant and his wife had a strong credit history. Their financial problems began when Applicant experienced a period of decreasing income associated with layoffs in 2002 and 2005, which caused him to seek work in the financial services industry. In 2006, Applicant found an engineering position and relocated his family from State 1 to State 2. Initially, Applicant listed his home in State 1 for sale; however, the home did not appraise for the asking price. Applicant approached his mortgage holders about accepting a short sale. Despite having buyers willing to purchase the property, the second mortgage holder would not accept the terms of a short sale. For two years, Applicant, who was renting a home in State 2, continued to pay the mortgages on the home in State 1. He often relied on credit cards to help make ends meet. In 2008, the house in State 1 went into foreclosure. Applicant did not receive an IRS Form 1099-C from the second mortgage holder; as a result, a deficiency balance of \$68,000 remains.³

Applicant tried to work with his creditors, explaining to each the hardship being caused by his inability to sell his home in State 1. None of the creditors were willing to accept repayment on terms amenable to Applicant. Seeking help in resolving his debt, Applicant enrolled in a nationally-advertised program that promises to turn outstanding debt into wealth. He paid the \$10,000 enrollment fee using a credit card. When Applicant realized that he was not going to receive any benefit from the program, he demanded a full refund of his money, but to no avail. Unable to receive assistance from his creditors or the debt-to-wealth program, Applicant stopped making payments on his debts in 2008. In 2009, one creditor attempted to obtain a judgment against Applicant. The court dismissed the lawsuit, without prejudice, because the creditor failed to appear

² Tr. 18, 25, 47-50, 71; GE 1; AE L-Q.

³ Tr. 19-30, 52-62, 66-69; GE 1-5; AE B-H.

at the hearing. Applicant believes that the dismissal of the lawsuit also relieves him of his responsibility to repay the debt.⁴

Since 2008, Applicant has focused his efforts on catching up on other financial obligations. However, he did not provide details on any non-SOR debts he has paid. He has also expended significant effort in cleaning up his credit report. Applicant has spent approximately \$1,500 on the services of two credit counseling organizations with the aim of repairing his credit, primarily through having derogatory information removed from his credit report as required under the Fair Credit Reporting Act. Most recently, he has notified each of the four creditors listed in the SOR that he plan to initiate lawsuits against them for alleged violations of Sate 2's Deceptive Trade Practices Act for failing to accurately report information to the credit reporting bureaus. To date, Applicant has not resolved any of the \$120,000 in delinquent debts alleged in the SOR. Although he admits to incurring the debt, he believes that the debts are uncollectible under the statutes of limitations in State 1 and State 2.⁵

Applicant lives paycheck to paycheck. He lives modestly and within his means with the help of a budget. He is current on his recurring financial obligations.⁶

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.

⁴ Tr. 22, 30-31, 59-61, 80-81; AE A.

⁵ Tr. 31-32, 63, 81-86, 90-91; GE 2; AE I-J, R.

⁶ Tr. 35-36, 80-81, 85.

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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁷ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

The SOR alleges that Applicant incurred approximately \$120,000 in delinquent debt, which includes the deficiency balance on the home he lost to foreclosure in 2008. Initially, Applicant admitted each allegation in the SOR, without explanation.⁸ However, in his post-hearing submission, he retracted his admissions and denies that he owes the four delinquent debts alleged in the SOR, claiming that the debts are now uncollectible because of the statutes of limitations in States 1 and 2.⁹ The Government has established its *prima facie* case against Applicant. He disclosed two of the four alleged debts in his security clearance application and discussed each debt in his subject

⁷ AG ¶ 18.

⁸ Answer, dated July 12, 2012.

⁹ AE R.

interview.¹⁰ The delinquent debts are also reported on his November 2010 and May 2012 credit reports.¹¹ The evidence shows Applicant's "unwillingness to satisfy debts"¹² and "history of not meeting financial obligations."¹³

Here, events beyond Applicant's control contributed to his financial difficulties,¹⁴ specifically several years of underemployment and the burden of having to pay the mortgage on the home in State 1 while it remained on the market. Initially, Applicant engaged in good-faith efforts to resolve his outstanding debts.¹⁵ He tried working directly with his creditors. Although his decision to enroll in a \$10,000 program promising to turn his debt into wealth may have been unwise, he did so with the sincere belief that the program could help him resolve his debt.¹⁶ Under the perception that he had been treated unfairly by his creditors, Applicant decided not to repay his legitimate debts after he lost the home in State 1 to foreclosure. Instead, he decided to rely on the operation of the statute of limitations. While Applicant receives some credit for the mitigating evidence in the record, it is not sufficient to overcome the concerns raised by his conduct.

Applicant's reliance on the applicability of the statute of limitations fails on two grounds. First, the assertion is not supported by the record.¹⁷ Although he cited the relevant statutes, Applicant did not submit any information regarding the specific terms of the credit agreements, which prevents a "reasoned determination as to which states' statute of limitations applies."¹⁸ Second, even if the statute of limitations applied, it does not resolve the inquiry regarding Applicant's security worthiness.¹⁹ Security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive.²⁰ Furthermore, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts

¹⁰ GE 1, 3.

¹¹ GE 4-5.

¹² AG ¶ 19(a).

¹³ AG ¶ 19(c).

¹⁴ See AG ¶ 20(b).

¹⁵ See AG ¶ 20(d).

¹⁶ See AG ¶ 20(c).

¹⁷ ISCR Case No. 08-01122 (App. Bd. Feb 9, 2009).

¹⁸ *Id.*

¹⁹ See ISCR Case No. 10-03656 (App. Bd. Jan.19, 2011).

²⁰ See, e.g., ISCR Case No. 00-0030 at 3 (App. Bd. Sep. 20, 2001); ISCR Case No. 07-16841 at 4 (App. Bd. Dec. 19, 2008).

and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.²¹ Similarly, the security issues raised in this case are not diminished by evidence that Applicant is current on his recurring financial obligations.²²

Security clearance adjudications regarding financial issues are not debt collection proceedings.²³ Rather, the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."²⁴ Applicant's decision not to pay his debts reflects poorly on his judgment, reliability, trustworthiness, and ability to protect classified information. Applicant's decision also shows an unwillingness to take responsibility for his actions. With each line of credit, Applicant accepted the terms of repayment and used the credit extended to him. He refused to pay when the previously agreeable terms were no longer acceptable to him. Applicant is not a victim of illegal or deceptive practices by his creditors. While the creditors do have a statutory obligation to report accurate account information to the credit reporting bureaus, any failure to do so does not affect Applicant's responsibility to pay his legitimate debts. Similarly, a dismissal of a creditor's case, without prejudice, does not extinguish the debt. Based on Applicant's behavior, it is not unreasonable to question his willingness to comply with security policies or report a security infraction or violation if he perceives the consequences to be unfair or contrary to his self-interest.

The evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*²⁵ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept. Despite the favorable information in the record, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against 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.d.:	Against Applicant

²¹ ISCR Case No. 00-0345 at 3 (App. Bd. Dec. 12, 2001); ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003); ISCR Case No. 07-09966 at 2-3 (App. Bd. Jun. 25, 2008).

²² ISCR Case. No. 99-0296 (App. Bd. Apr. 18, 2000).

²³ ISCR Case No, 09-02160 (App. Bd. Jun 21, 2010).

²⁴ AG ¶ 2(a).

²⁵ *Navy v. Egan*, 484 U.S. 518 (1988).

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge