



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



In the matter of:)
)
) ISCR Case No. 11-08789
)
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. Applicant incurred delinquent debt after his wife became unable to work because of injuries from a 2007 car accident. He has made a good-faith effort to repay his creditors and has established a track record of repayment. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DoD) Directive,¹ on August 3, 2012, DoD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DoD adjudicators could

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.

not make the preliminary affirmative finding that it is 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 October 9, 2012. At the hearing convened on December 6, 2012, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through G, without objection. After the hearing, Applicant timely submitted AE H through M, 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 14, 2012.

Procedural Issues

Without objection from the Applicant, I granted Department Counsel's motion at hearing to withdraw SOR ¶¶ 1.e² and 1.i,³ and to change ¶ 1.h to correct a clerical error.⁴

Findings of Fact

Applicant, 50, has been employed by a federal contractor as a field engineer since June 2010. Married for 22 years, he is the father of three adult children between the ages of 21 and 27. Applicant continues to provide financial support for one daughter and her four-year-old child.⁵

The amended SOR alleges that Applicant is indebted to eight creditors for approximately \$23,000. Applicant denies the debts alleged in ¶¶ 1.a through 1.c, claiming that he is not responsible for the accounts. He provided documentation showing that the three accounts were erroneously reported on his credit report and that the issues have been resolved by the respective creditors. He also denies ¶ 1.h, a credit card, which he believes is a duplicate of another account. According to Applicant, the creditor does not have any record of the alleged account. The credit reports in the record show conflicting information being reported by the same agency. Applicant has filed at least two disputes with the credit bureau regarding the account. Both are unresolved. Applicant admits the four delinquent debts alleged in ¶¶ 1.d, 1.f, 1.g, and 1.j.⁶

² The account is a duplicate of the account alleged in ¶ 1.f.

³ At the time the SOR was issued, this student loan account was not delinquent. The account remains in good standing. See AE C.

⁴ Tr. 10-12.

⁵ Tr. 45-47; GE 1.

⁶ Tr. 48-53; 65-69; GE 2, 5; AE G, L.

Applicant's financial problems began when his wife was seriously injured in a car accident in 2007. The injury aggravated a pre-existing condition and required significant medical intervention. Before the accident, the couple earned a joint income of approximately \$90,000. Even though Applicant earned sporadic income as an independent consultant, they were able to meet all of their financial obligations. After her third accident-related surgery in late 2008, Applicant's wife was out of work for six months without pay. She attempted to return to work full-time, but her medical issues forced her to reduce her hours to part-time after four months. She worked part-time for one month before she qualified for her employer's short-term disability program in December 2009. For the next six months, Applicant's wife received short-term disability at less than half of her base pay. As Applicant's wife's income vacillated and the couple paid mounting medical bills (Applicant believes he has paid \$26,000 in medical bills related to his wife's care), the couple fell behind on their bills as alleged in the SOR. They relied on credit cards and on help from family members and friends, borrowing almost \$4,000 dollars, to meet their financial obligations. When Applicant's wife began to collect long-term disability payments from her employer at her full salary, Applicant's household income returned to its pre-accident rate and the couple began to address the delinquent debts.⁷

Initially, Applicant consulted a debt-consolidation program, but declined to participate, citing the high cost. Instead, he and his wife started working with their creditors directly. The couple first focused on rehabilitating the mortgage on their home, saving it from foreclosure. Applicant depleted his savings, paying \$9,000 to the Internal Revenue Service (IRS) after the agency audited Applicant's 2009 tax return. Once their mortgage returned to current status and they secured a payment plan with the IRS, the couple began addressing their other delinquent debts by entering into payment plans with their creditors. In June 2010, Applicant started his current job, earning \$85,000. In doing so, he began receiving a steady paycheck and became a geographical bachelor as the new job is 200 miles from his home. Since then, Applicant has supported two households.⁸

In September 2012, Applicant's wife's employer terminated her long-term disability payments after the employer's insurer opined that she could return to work under certain circumstances. Unsure of her rights, Applicant's wife has not appealed this decision. Her primary care physician and her treating orthopedic surgeon believe that she is permanently disabled and unable to return to work. She has applied for disability benefits from the Social Security Administration. Her claim is under review.⁹

Despite the loss of his wife's disability income and the increase in his expenses associated with maintaining a second residence, Applicant is continuing to make progress on resolving his delinquent debts. He has been participating in payment plans for the debts alleged in ¶¶ 1.d, 1.f, 1.g, and 1.j. Since May 2012, he has paid \$2,900

⁷ Tr. 20-29, 37-38, 78, 80-81, 88-90.

⁸ Tr. 36-37, 72-76, 78-79, 84-87.

⁹ Tr. 30-36; AE F.

towards his four delinquent accounts. He has also repaid \$3,000 of the personal loans he received from friends and family. Applicant lives within his means and is current on his recurring financial obligations.¹⁰

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.

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

¹⁰ Tr. 78; GE 2; AE A-B, D-E, I-K, M.

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.”¹¹ 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, as amended, alleges that Applicant is indebted to eight creditors for approximately \$23,000. Applicant demonstrated that he is not responsible for the debts alleged in ¶¶ 1.a through 1.c. Based on the conflicting information regarding 1.h and Applicant’s efforts to resolve the issue, I find ¶ 1.h in his favor. However, Applicant admits and the record supports a finding that he is responsible for the delinquent debts alleged in ¶¶ 1.d, 1.f, 1.g, and 1.j. These delinquent debts are sufficient evidence to establish Applicant’s “inability to satisfy debts”¹² and his “history of not meeting financial obligations.”¹³

Events beyond Applicant’s control contributed to his financial difficulties.¹⁴ His wife’s 2007 car accident and her resulting medical issues created financial instability and irregularity that resulted in the accumulation of delinquent debt. Applicant has demonstrated that he has acted responsibly in light of his financial situation. As soon as his finances began to stabilize, he began rehabilitating his mortgage and entering into payment plans for his delinquent debt. Applicant has also established that he has made a good-faith effort to repay his creditors by showing a track record of repayment.¹⁵ Applicant has mitigated the financial considerations concerns alleged in the SOR.

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’s financial problems and resulting delinquent debt are not the result of irresponsible, reckless, or negligent behavior. The debt is reasonable given the severity of his wife’s medical issues and the impact on her ability to earn an income. Even with the loss of his wife’s

¹¹ AG ¶ 18.

¹² AG ¶ 19(a).

¹³ AG ¶ 19(c).

¹⁴ See AG ¶ 20(b).

¹⁵ See AG ¶ 20(d).

disability income, he has demonstrated a commitment to resolving his SOR and non-SOR debts. 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.d:	For Applicant
Subparagraph 1.e:	Withdrawn
Subparagraphs 1.f – 1.h:	For Applicant
Subparagraph 1.i:	Withdrawn
Subparagraph 1.j:	For Applicant

Conclusion

In light of all 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