



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



In the matter of:)	
)	
)	ISCR Case No. 11-09857
)	
Applicant for Security Clearance)	

Appearances

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

01/15/2013

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 strategically defaulted on over \$219,000 in business debts he personally guaranteed. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DoD) Directive,¹ on August 31, 2012, the 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 9, 2012. At the hearing convened on December 5, 2012, I admitted Government's Exhibits (GE) 1 through 8 and Applicant's Exhibits (AE) A and B, without objection. After the hearing, Applicant submitted AE C through L, which I admitted without objection. The Government's memorandum regarding the post-hearing submissions is appended to the record as Hearing Exhibit (HE) 1. I received the transcript (Tr.) on December 13, 2012.

Findings of Fact

Applicant, 43, has worked for a federal contractor as an account manager specializing in military sales since November 2010. He holds undergraduate and graduate degrees in business administration, the latter with a concentration in finance. Married for 16 years, he is the father of a seven-year-old daughter. Together, Applicant and his wife earn a household income of over \$400,000. In addition, he reports holding over \$400,000 in other assets.²

According to the SOR, Applicant is indebted to 19 creditors for approximately \$254,000 in delinquent debt. Seven of the alleged debts, ¶¶ 1.d. through 1.h., 1.k., and 1.o., totaling approximately \$7,200, are personal accounts that Applicant has resolved.³ The majority of the remaining delinquent accounts are business debts Applicant personally guaranteed.

Capitalizing on his background as a retired professional athlete and his career in sales, Applicant decided to open an athletic store in 2002. He created a limited liability company (LLC) and entered into a franchising agreement with a nationally-recognized athletic store chain. Through the LLC, Applicant leased retail space in a shopping center and purchased merchandise from several globally-recognized vendors.⁴ Understanding the potential ramifications of the decision, Applicant personally guaranteed some of the loans, credit cards, and sales contracts he entered into to establish and operate the business, the largest being a \$125,000 Small Business Administration loan made through a commercial bank.⁵

Applicant shuttered the store in 2006, surrendering all of the store's contents, including unsold merchandise and fixtures to the landlord. When the store closed, the LLC owed at least \$219,000⁶ in business-related debts. The LLC filed for Chapter 11

² Tr. 22, 50, 56, 100; GE 1, 3.

³ GE 3,8; AE D, G, I, L.

⁴ Applicant testified that the nationally recognized companies would not contract with an individual, only businesses.

⁵ Tr. 22-23, 26-27, 30 – 31, 43, 56.

⁶ This number is an estimate based on the SOR allegations Applicant indicated as being debts from the failed business, specifically ¶¶ 1.a – 1.c., 1.m., 1.p., 1.r. – 1.s.

bankruptcy protection in March 2006, converting to Chapter 7 three months later. The LLC entered into a receivership agreement with one vendor in an attempt to resolve the outstanding debt. Ultimately, the court dismissed the bankruptcy petition because the LLC failed to appear at the initial creditor's meeting. After the bankruptcy was dismissed, the LLC's creditors obtained civil judgments against Applicant for the debts he personally guaranteed. The LLC filed for bankruptcy protection again in August 2012 to protect Applicant's personal assets from the receivership, which was trying to force the sale of Applicant's home to satisfy the debt. Filing the petition effectively halted any collection efforts by the receivership and allowed Applicant to negotiate a settlement. Applicant settled the obligation, as alleged in ¶ 1.a., in September 2012.⁷

Aside from the receivership settlement, Applicant has not made efforts to resolve the business debts he personally guaranteed. He has not contacted any of his creditors. Nor has he attempted to initiate any payment plans. Applicant chose to strategically default on the personally-guaranteed debt, deciding instead to deal with the consequences of bad credit for the seven years creditors are allowed to report the negative information under Fair Credit Reporting Act. Applicant believes the last of the debts should be removed from his credit report by October 2013. He justified this approach because it provided him the best opportunity to protect his personal assets and preserve his marriage.⁸

Applicant has disputed, with the credit reporting agencies, the validity of several of the alleged accounts as being inaccurately reported on his credit reports or as being reported in violation of the Fair Credit Reporting Act's seven year limitation on derogatory information. He has filed disputes related to ¶¶ 1.b. through 1.c., 1.l. through 1.n., 1.p. through 1.s. Applicant does not deny that he incurred the debts either in furtherance of his business venture or for his personal benefit. Applicant chose not to file for personal bankruptcy protection because he believed it would hurt his future employment prospects, even though he understood it would resolve the personally-guaranteed business debts.⁹

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

⁷ Tr. 23, 27-28, 42-43, 105-108; GE 4, 5; AE B, D.

⁸ Tr. 57-62, 105, 110-113.

⁹ Tr. 32-35, 37-38, 85-95, 104-105, 113-114; AE D.

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 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 such “[f]ailure 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.”¹⁰ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry. Here, Applicant has accumulated over \$254,000 in delinquent debt, the majority of which is

¹⁰ AG ¶ 18.

personally-guaranteed business debt, which he has chosen not to pay. The evidence supports a finding that Applicant has demonstrated both an “inability and unwillingness to satisfy debts”¹¹ as well as “a history of not meeting financial obligations.”¹²

Although Applicant’s payment of approximately \$7,200 in delinquent personal accounts is evidence of some “good-faith effort to repay his overdue creditors,”¹³ this is not sufficient to mitigate the security concerns raised by his conduct or merit the application of any of the financial considerations mitigating conditions. Fully understanding the possible ramifications of his decisions, Applicant assumed the risk inherent in becoming a small-business owner, personally guaranteeing the debts he incurred in an attempt to establish the LLC as a going concern. When repaying the debt was contrary to his self-interest, he strategically defaulted on legitimate debts. For the past six years he has lived with the consequences associated with having a derogatory credit history. While a negative credit history may be a heavy burden to bear, it does not diminish the security significance of Applicant’s decision to not pay his creditors. Neither does the operation of the Fair Credit Reporting Act or the statute of limitations on the collectability of Applicant’s delinquent debts resolve the underlying security issues.¹⁴

Security clearance adjudications regarding financial issues are not debt collection proceedings.¹⁵ 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.”¹⁶ Applicant’s decision to not pay the debts he personally guaranteed reflects poorly on his judgment, reliability, trustworthiness, and ability to protect classified information. Further, the decision calls into question his willingness to follow the rules of properly handling and safeguarding classified information if doing so might conflict with his financial interest. Here, Applicant chose to default on debts because he believed doing so was necessary to protect his assets and preserve his family. Despite having the means to address the debt, he made no attempts to repay the debts associated with his business. He dismissed the idea of filing for personal bankruptcy, which he understood to be a legitimate method of addressing the outstanding business debts, because he believed it would compromise his future job prospects. Given the record, it is not unreasonable to extrapolate or question Applicant’s willingness to report a security infraction or violation if doing so might jeopardize his job or his standing with his employer or some other personal interest.

¹¹ AG ¶ 19(a).

¹² AG ¶ 19(c).

¹³ AG ¶20(d).

¹⁴ See 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). See *also* ISCR Case No. 08-01122 (App. Bd. Feb. 9, 2009)

¹⁵ ISCR Case No, 09-02160 (App. Bd. Jun 21, 2010).

¹⁶ AG ¶ 2(a).

The evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*¹⁷ 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. Nevertheless, 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
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b. – 1.c.:	Against Applicant
Subparagraphs 1.d. – 1.h.:	For Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraphs 1.j. – 1.k.:	For Applicant
Subparagraphs 1.l. – 1.n.:	Against Applicant
Subparagraph 1.o.:	For Applicant
Subparagraphs 1.p. – 1.s.:	Against Applicant

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

¹⁷ *Navy v. Egan*, 484 U.S. 518 (1988).