



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



In the matter of:)
)
) ISCR Case No. 11-10759
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, 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 \$54,600 in unresolved delinquent debt, including \$39,000 in unpaid federal taxes. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on September 18, 2012, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DOD

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.

adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue 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 December 21, 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 January 7, 2013. Applicant did not respond to the FORM; accordingly, the items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 10. The case was assigned to me on February 25, 2013.

Findings of Fact

Applicant, 39, works as an insulator at a shipyard. He has been employed by a federal contractor since 2002. Before his job at the shipyard, Applicant worked in shipping and receiving for a national retailer. Married 18 years, Applicant has a teenage daughter.²

The SOR alleges, and Applicant admits, that he is indebted to 12 creditors for approximately \$54,600, the majority of which is a federal tax debt for \$39,000. The record contains few details about Applicant's troubled finances. According to his June 2011 subject interview, Applicant seems to have encountered financial problems when his wife lost her job. Applicant also explained that he accumulated a large federal tax bill because he did not pay his taxes. However, the interview does not flesh out any additional details about either issue. In his August 2012 response to DOHA financial interrogatories, Applicant indicated that the Internal Revenue Service (IRS) approved a payment plan for his delinquent taxes; however, he did not provide any documentation to corroborate this claim. Although Applicant expressed the intent to pay his delinquent debts in his subject interview, he did not discuss any plans he had for doing so.³

According to Applicant, there is no reason for anyone to question his finances, his ability to live within his means, or his willingness or ability to pay his debts. He has not received any financial counseling, but believes that his current financial situation is good as he is able to satisfy his recurring monthly obligations.⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not

² GE 5.

³ GE 6.

⁴ GE 6.

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

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."⁵ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.⁶ The Government does not have to prove that an applicant poses a clear and present danger to national security,⁷ 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.⁸

⁵ AG ¶ 18.

⁶ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

⁷ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

⁸ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

Applicant owes over \$54,600 in delinquent debt. The allegations are supported by the record, establishing the Government's *prima facie* case.⁹ Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.¹⁰ Applicant claims that his financial problems were caused by an event beyond his control – the loss of his wife's income after she lost her job. While this may be true, Applicant provided no other information to merit the application of any of the financial considerations mitigating conditions. Furthermore, Applicant did not provide any documentation to support his claims of a payment plan for his unexplained federal tax debt. A person who fails to meet his legal obligation to the Government does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.¹¹ 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. Applicant failed to meet his burdens of production and persuasion. At a minimum, an applicant is expected to provide information, orally or documentary, regarding his financial interests.¹² Absent such evidence, there is no basis for a finding of financial rehabilitation. Following *Egan*¹³ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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:	Against Applicant

⁹ GE 6-10; Answer.

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ See ISCR Case No. 98-0810 (App. Bd. Jun. 8, 2000).

¹² See ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

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

Conclusion

Based on the record, 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