



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06309

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

05/25/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. Applicant failed to mitigate the security concerns raised by his outstanding delinquent accounts, his failure to file federal income tax returns from 2007 to 2012, and his outstanding state and federal tax debts. Clearance is denied.

Statement of the Case

On June 10, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

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 answered the SOR and requested a decision without a hearing.² The Government submitted its written case on January 20, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on February 1, 2016, and did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 3, and 5 through 6, without objection. GE 4 is excluded as explained below.

Procedural Matters

GE 4 is a report of investigation (ROI) summarizing the interview Applicant had with an investigator in July 2014. The interview, which contains adverse information, has not been authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions him that if he fails to object to the admission of the interview summary in his response to the FORM that his failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM or, specifically, to Footnote 1 does not demonstrate that he understands the concepts of authentication, waiver, and admissibility. It also does not establish that he understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 4 is inadmissible and I have not considered it.

Findings of Fact

Applicant has worked for a federal contractor since May 2011. He completed a security clearance application, his first, in May 2014. The ensuing investigation revealed and the SOR alleges that Applicant did not file his federal income tax returns for 2007 to 2012 until 2014, resulting in a \$2,300 fine from the IRS (SOR ¶ 1.f). The SOR also alleges that Applicant owes approximately \$2,000 for a state tax lien (SOR ¶1.c), \$1,748 on 24 collection accounts owed to a local government for parking tickets (SOR ¶ 1.d), two medical accounts for \$202 (SOR ¶ 1.a) and \$56 (SOR 1.e), respectively, and an outstanding cable bill for \$ 156 (SOR ¶ 1.b).

Applicant admits that he failed to timely file his federal tax returns. He did not consider the obligation to file the returns pressing because he usually received a refund. Applicant claims that he has made payment arrangements with the IRS to pay the fine. Applicant denies owing the debts alleged in SOR ¶¶ 1.b through 1.e. He claims that he currently has an active account with the creditor holding SOR ¶ 1.b and that he has paid SOR ¶¶ 1.c through 1.e. Applicant also denies the medical debt alleged in SOR 1.a because it does not appear on the credit reports he obtained. The debt is reported on GE 6, but does not identify a creditor.

Applicant did not provide any documentation to support any of his claims about the alleged debts. He did not provide any information about his current finances.

² GE 1.

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 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."³

Applicant's admissions and the credit reports in the record establish the Government's *prima facie* case, that Applicant has a history of financial problems, that he has demonstrated an inability or unwillingness to pay his creditors, and that he failed to file federal income taxes for five years between 2007 and 2012.⁴ Despite finding

³ AG ¶ 18.

⁴ AG ¶ 19 (a), (c), and (g).

SOR ¶ 1.a in Applicant's favor,⁵ none of the financial consideration mitigating conditions apply. Applicant failed to submit any documentation to corroborate his claims that he paid SOR ¶¶ 1.c through 1.f. He also failed to establish that his account with the creditor in SOR ¶ 1.b is in good standing.

Based on the record, doubts remain about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant failed to meet his burden of production and persuasion to refute or mitigate the SOR allegations. He did not provide any evidence to show financial rehabilitation or reform. Accordingly, his request for access to classified information is denied.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.f:	Against Applicant

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

⁵ The Government's evidence regarding SOR ¶ 1.a does not identify a creditor. As a result, Applicant's ability to investigate and ultimately resolve the account is limited. Furthermore, individuals typically do not incur medical debt under circumstances that indicate reckless or irresponsible behavior that reflects negatively on their security worthiness.