



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



In the matter of:)
)
) ISCR Case No. 15-01319
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. Applicant incurred delinquent debt under circumstances that do not reflect negatively on his security worthiness. Clearance is granted.

Statement of the Case

On September 18, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.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 December 30, 2015. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on January 21, 2016, and provided a response. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 4 and 6 through 7, without objection. GE 5 is omitted as discussed below. Applicant's FORM response and attachments are admitted as Applicant's Exhibit (AE) A through D, without objection.

Procedural Matters

GE 5 is a report of investigation (ROI) summarizing the interview Applicant had with an investigator in December 2012. The interview, which contains adverse information, is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advised Applicant of that fact and further cautions him that if he failed 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. Even though Applicant responded to the FORM, his failure to respond Footnote 1, specifically, 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 5 is inadmissible and I have not considered it.

Findings of Fact

Applicant has worked for a federal contractor since July 2005. He previously served in the Army, separating in 2001 after 13 years of service. Applicant completed a security clearance application in October 2012. The ensuing investigation revealed delinquent accounts. Those accounts and Applicant's failure to disclose them on his security application serve as the basis for the SOR allegations.³

In May 2005, Applicant purchased a home secured by two mortgages. In 2008, Applicant learned that his employer was moving the facility where he was employed from State 1 across the country to State 2. After evaluating his employment prospects and weighing the financial impact of a job search, he decided to relocate to State 2. As a result of the national economic downturn, Applicant's home decreased in value and was worth less than the outstanding mortgages. In April 2008, Applicant wrote a hardship letter to his primary mortgage lender. He asked the lender to convert the mortgage from an adjustable rate mortgage to a fixed interest rate loan or to allow Applicant to execute a short sale on the property. For the next year, with the help of a real estate agent, Applicant attempted to sell the house. Applicant received several offers from interested buyers to purchase the home. However, the primary mortgage lender either failed to respond to the proposed offers or, in at least one case, took so

² GE 3.

³ GE 4, 6-7.

long to approve the sale that the buyer withdrew the offer and bought a different property.⁴

Applicant paid the mortgages on the home until October 2008, when he could no longer afford to pay the mortgages in addition to his living expenses in State 2. The house sat empty until the primary mortgage holder initiated foreclosure proceedings in July 2011. The resulting foreclosure sale satisfied the primary mortgage. When Applicant completed the October 2012 security clearance application, he did not know that second mortgage remained unresolved.⁵

The SOR alleges that Applicant is indebted to two mortgage lenders on separate accounts, both with balances of \$107,321 (SOR ¶¶ 1.a and 1.b).⁶ The lender that originated the second mortgage in 2005 sold the loan to Lender A, who serviced the loan as Lender A Servicing Company. In September 2011, Lender B, acquired Lender A and its servicing company, which ceased operations in the fourth quarter of 2011.⁷ The credit reports in the record, GE 6 and 7, show that Applicant has accounts with Lender A, Lender A Servicing Company (SOR 1.a), and Lender B (SOR 1.b) for the same mortgage loan. In December 2013, Lender B agreed to a multi-state legal settlement, resolving allegations of mortgage servicing misconduct against Lenders A and B in 49 states, including State 1 and D.C., between 2009 and 2012.⁸

Over the years, Applicant has experienced difficulty obtaining information or assistance from his mortgage lenders. Applicant's most recent inquiry about the status of the second mortgage received the following response from Lender B:

A review of our records indicates that the aforementioned loan was liquidated with [the servicing entity of Lender A Servicing Company; we [Lender B] did not service the aforementioned loan. Therefore, we are unable to provide any information with regards to the last activity date and foreclosure status of the property.⁹

⁴ GE 3.

⁵ GE 3, 6-7.

⁶ Given the nature of the SOR allegation and the evidence offered by the parties, I have, *sua sponte*, done additional research and taken judicial notice of facts about Lender A and B as reported in Lender B's mandatory filings with the Securities and Exchange Commission and press releases from State 1's Attorney General's office.

⁷ Lender B, Annual Report (FORM 10-K), (Feb. 29, 2012).

⁸<https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-21-billion-mortgage-settlement-ocwen> (Dec. 19, 2013).

⁹ GE 3; AE A.

Lender B also provided Applicant with a 2015 IRS FORM 1098: Mortgage Interest Statement, showing a “payoff-charge off” of \$107,321 in principal and \$64,361 in interest in February 2015, as well as a zero balance on the loan.¹⁰

The SOR also alleges that Applicant had two outstanding property tax liens related to a property in State 1 that he purchased in 2003. The liens for \$162 (SOR ¶ 1.c) and \$160 (SOR 1.d), respectively, were recorded in November 2013 (SOR ¶ 1.a) and November 2012 (SOR 1.d). Even though Applicant relinquished ownership of the property in 2005, transferring the deed to another person, he paid both liens. State 1 released the liens in late 2015.¹¹

In January 2016, Applicant purchased a home using a loan program sponsored by the Department of Veterans’ Affairs. According to the most recent credit report in the record, GE 7, dated January 2015, Applicant’s only unresolved delinquent accounts relate to those alleged in the SOR. His other open consumer credit accounts are in good standing.¹²

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.

¹⁰ AE B.

¹¹ GE4, 6-7; AE C.

¹² AE D.

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.”¹³

The SOR alleges that Applicant owes four delinquent accounts. However, SOR ¶ 1.a is duplicative of SOR ¶ 1.b; accordingly, the former is resolved in Applicant’s favor. GE 6 and 7 substantiate the remaining SOR allegations, establishing the Government’s *prima facie* case that Applicant has a history of not paying his creditors as well as an inability to pay his debts.¹⁴ Applicant has provided enough information to explain, refute, and mitigate the SOR concerns.

Applicant’s delinquent accounts were not caused by irresponsible or reckless behavior, but by market factors beyond his control: his employer’s decision to leave State 1; a national financial crisis; and, business practices by his mortgage lenders that inhibited his ability to sell the property or obtain clear information on the loans. Applicant acted responsibly in light of these circumstances. He communicated with his primary mortgage lender about his impending financial hardship. Applicant continued to pay the mortgage for as long as he was able. He engaged a real estate professional to sell the home and serve as a liaison with his mortgage lenders. Furthermore, the record contains sufficient evidence to show that the remaining SOR debts ¶¶ 1.b through 1.d have been resolved. In particular, the FORM 1098 Lender B issued to Applicant indicates there is a zero balance on the account. The Government did not object to the form, challenge its meaning, or provide an alternative explanation of its purpose. The examination of the financial documentation in the record shows no ongoing financial problems. Applicant’s finances are under control.¹⁵

Personal Conduct

Conduct involving a lack of candor or dishonesty, particularly, a failure to provide truthful and candid answers during the security process, raises questions about an

¹³ AG ¶ 18.

¹⁴ AG ¶¶ 19 (a) and (c).

¹⁵ AG ¶¶ 20(a) – (c).

individual's reliability, trustworthiness, and ability to protect classified information.¹⁶ The SOR alleges that Applicant deliberately failed to disclose his delinquent debt on his October 2012 security clearance application. Applicant denies the allegation. Proof of omission, alone, does not establish or prove an applicant's intent or state of mind when he completed the application. The record does not establish that Applicant intended to conceal adverse information from the Government. None of the personal conduct disqualifying conditions apply.

Based on the record, I have no doubts regarding Applicant's ability to properly handle and safeguard classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Other than the four debts alleged in the SOR, Applicant's credit reports do not show a history of financial mismanagement. On the contrary, Applicant has a history of responsibly handling his consumer debt obligations. The SOR debts were caused by events that Applicant could have neither foreseen nor controlled. The resulting delinquent debts are not indicative of behavior that raises a security concern.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge

¹⁶ AG ¶ 15.