



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



In the matter of:)
)
) ISCR Case No. 15-02742
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, 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 resolved his delinquent debt through Chapter 7 bankruptcy protection. However, Applicant failed to mitigate the concerns raised by his history of financial problems and the circumstances causing them. Clearance is denied.

Statement of the Case

On November 16, 2015, the DOD issued a 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 February 3, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on February 23, 2016, and provided a response. The case was assigned to me on August 8, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 10, without objection. Applicant's FORM response and attachments are admitted as Applicant's Exhibit (AE) A through C, without objection.

Findings of Fact

Applicant, 51, has worked for his current employer since May 2013. He previously held a security clearance from at least August 1994 to December 1996, when he served in the Marine Corps. He retired in 1996 after 22 years of service. He completed his most recent security clearance application in July 2015, disclosing several delinquent accounts.³

Applicant blamed his financial problems on the dissolution of his first marriage, which ended in divorce in April 2010. In the divorce settlement, Applicant assumed the consumer debt incurred during the marriage. He could not afford the debt payments on his salary alone.⁴

Applicant's financial problems were exacerbated by seven months of unemployment between October 2012 and May 2013. From August 2000 to October 2012, Applicant worked as a sheriff's deputy. During a shift in September 2012, while on a personal phone call, Applicant heard a call over the police band radio. As the officer closest to the location of the call, he was required to respond. However, when another officer, who was further away, responded, Applicant decided to ignore the call. Applicant resumed his personal phone call with his fiancée, with whom he was arguing. When Applicant's supervisor confronted him about his failure to respond to the call, Applicant told his supervisor that he was busy securing a property. Surveillance video revealed Applicant's lie. In the midst of the resulting trial board convened to review Applicant's misconduct, his supervisor gave him the option to resign without further repercussion. In October 2012, Applicant resigned from the sheriff's office in hopes of preserving the possibility of employment with another law enforcement agency.⁵

In May 2013, Applicant secured employment as a security officer with a federal contractor. In connection with Applicant's July 2015 security clearance application, a background investigator interviewed him in August 2015. They discussed the events related to Applicant's October 2012 resignation and Applicant's financial problems. Two

² GE 3.

³ GE 5.

⁴ GE 4, 6; AE A.

⁵ GE 5-6.

years after the interview in June 2015, Applicant filed for Chapter 7 bankruptcy protection. He received a discharge of debtor in September 2015.⁶

The SOR alleges Applicant's 2015 bankruptcy filing and discharge of debtor as well as eight delinquent accounts totaling approximately \$10,900. However, these debts, though unlisted on the bankruptcy petition, were also included in the September 2015 discharge order.⁷ Applicant states that he has no ongoing financial issues, but he did not provide any documentation about his current finances. He did provide two letters attesting to his good character, including one from a former supervisor at the sheriff's office.⁸

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).

⁶ GE 4-5.

⁷ *In re Stecklow*, 144 B.R. 314 (Bankr. D. MD., 1992); *In re Harmon*, 213 B.R. 805 (Bank D. MD., 1997).

⁸ GE 4, 6-10; AE A-C.

Analysis

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.”⁹ The SOR alleges that Applicant filed for Chapter 7 bankruptcy protection in June 2015, that his debts were discharged in September 2015, and that he incurred another \$10,900 in delinquent debt after the petition was discharged. Applicant’s admissions and the credit reports in the record establish the Government’s *prima facie* case that Applicant has a history of not meeting his financial obligations and that he demonstrated an inability to pay his creditors.¹⁰

Even though Applicant’s delinquent accounts were resolved through Chapter 7 bankruptcy protection, it does not mitigate the security concerns raised by his history of financial problems. While filing for bankruptcy is a reasonable method of resolving delinquent debt, it not considered a good-faith effort to repay overdue creditors as contemplated by the mitigating conditions.¹¹ Furthermore, Applicant’s financial problems were not entirely caused by events beyond his control. Notwithstanding the increased debt load Applicant carried after his 2010 divorce, Applicant’s most recent financial problems were the consequence a period of unemployment after Applicant engaged in an act of professional misconduct. Applicant’s decision to place his personal interests over his duties as a law enforcement officer and his subsequent decision to lie about his actions to his superior officer continues to reflect negatively on Applicant’s judgment, reliability, and trustworthiness.

Applicant did not present sufficient evidence to explain, mitigate, or refute the security concerns raised by his history of financial problems or the misconduct causing them. Neither the two character letters in the record nor his previous history as a clearance holder is sufficient to overcome the doubts about his judgment and reliability. Furthermore, Applicant also failed to provide information about the state of his current finances or any steps he has taken to effectuate financial rehabilitation or reform. He has not established that his finances are under control.

Based on the written 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 burdens of persuasion or product to warrant a favorable decision.

⁹ AG ¶ 18.

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006).

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

Subparagraphs 1.a – 1.i: 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