



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



In the matter of:)
)
) ISCR Case No. 15-02900
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Deputy Chief Department Counsel
For Applicant: Alan Edmunds, Esq.

08/21/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Although he paid 2 of his 14 delinquent accounts, this is insufficient to establish a good-faith effort to repay his creditors. Furthermore, he has continued to accumulate delinquent accounts. Clearance is denied.

Statement of the Case

On October 30, 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 continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on February 13, 2018, I admitted Government’s Exhibits (GE) 1 through 4

¹ The DOD CAF acted 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), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

and Applicant's Exhibits (AE) A through V, without objection. DOHA received the transcript (Tr.) on February 22, 2018. After the hearing, Applicant timely submitted AE W through Z, which are also admitted without objection.²

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant, 38, has worked for his current employer, a federal contractor, since 2007. He was initially granted access to classified information in 2005 while working for another federal contractor. He completed his most recent security clearance application in December 2012. He disclosed four delinquent accounts. The ensuing investigation revealed additional accounts. The SOR alleges that Applicant is indebted to 14 creditors for approximately \$204,000, including two mortgage loans, three student-loan accounts, an auto loan, and a judgment.³

Applicant blames his financial problems on two factors: the costs of maintaining his former home; and the dissolution of his master's degree program in 2008. Applicant purchased his first home in November 2005. He secured the property with two mortgages. Between 2009 and 2011, Applicant claims that the cost of repairs related to storm damage and water damage from a faulty hot water heater negatively impacted his finances. Applicant enrolled in a graduate program in 2007. He borrowed approximately \$32,000, using at least three student loans to finance his education. In approximately 2008, Applicant's degree program was dissolved without notice and Applicant was transferred into an interdisciplinary studies program. Applicant took courses through the spring 2009 quarter. Applicant does not remember why he stopped paying his loans. He testified that he may have been unable to pay because of limited cash flow or that he decided not to pay for classes toward a program for which he did not enroll.⁴

Between 2005 and 2010, Applicant earned approximately \$100,000 annually. He admitted that he began to overextend himself with the 2005 home purchase, 2007 graduate school tuition, and a 2009 motorcycle purchase. Applicant claims that he stopped paying the mortgages in 2014 and vacated the property in 2015. However, GE 3, the March 2015 credit report, indicates that he stopped paying the mortgages in

² HE II.

³ Tr. 14-15; GE 1-4.

⁴ Tr. 19-20, 28, 36-39, 47-78; AE W-Y.

February and August 2012, respectively. He stopped paying the loan on the motorcycle in August 2011. He stopped paying the student-loan accounts in January and February 2012. In July 2012, a creditor secured a judgment against Applicant for an unpaid credit card. Between January 2011 and November 2012, Applicant had another seven accounts go into collection, including two medical accounts, four accounts to a local government, and one consumer credit account.⁵

To date, Applicant has resolved the judgment alleged in SOR ¶ 1.g and paid off the motorcycle loan alleged in SOR ¶ 1.e. He has received a Cancellation of Debt, IRS Form 1099-C (1099-C), for the mortgage alleged in SOR ¶ 1.a. He claims that that the second mortgage account was also included. However, this assertion is not supported by the evidence. The 1099-C for SOR ¶ 1.a only references one account number and the cancelled balance corresponds to the amount owed on the primary mortgage loan. Applicant also received a 1099-C for SOR ¶¶ 1.c and 1.d. Applicant claims that the student loans debt alleged in SOR ¶ 1.h was also included. Again, the record does not corroborate this assertion. The student loans alleged in SOR ¶¶ 1.c and 1.d were held by the same bank. The creditor for the debt alleged in SOR ¶ 1.g is the university Applicant attended. Applicant did not provide any documentation to show that the bank assumed this account. Applicant disputes the debts alleged in SOR ¶¶ 1.f, and 1.i through 1.n. Because these debts no longer appear on Applicant's credit report, he considers the disputes resolved in his favor. He did not provide a basis for these disputes or any documents of his efforts to resolve the debts with his creditors.⁶

Applicant claims that his current finances are stable. In December 2015, Applicant received the financial counseling briefing required of individuals seeking to file for bankruptcy protection. The organization conducting the briefing did not prepare a debt-repayment plan for Applicant. He current earns \$133,000 annually and has approximately \$3,000 in disposable income each month. He has approximately \$20,000 in retirement savings. Applicant provided a February 2018 credit report. According to the report, Applicant has two charged-off accounts including: a January 2018 charged-off account for \$450; and, a November 2017 charged-off account for \$953. The credit report also shows three recent collection accounts totaling \$1,736.⁷

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.

⁵ Tr. 21, 29-33, 39, 49-54.

⁶ Tr. 18-20, 23-26, 30-35, 41-42, 55; AE L-M, O, S-T.

⁷ Tr. 17-18, 26, 42-46; AE P, S.

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(a), 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 national security eligibility will be resolved in favor of the 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

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.⁸

⁸ AG ¶ 18.

The record establishes the Government's *prima facie* case, that Applicant has a history of not meeting his financial obligations.⁹ Applicant's financial problems were largely caused by his overextending himself between 2005 and 2009. Events beyond his control, such as the repairs to his home and unexpected change in his graduate program, may have exacerbated the problem. While Applicant receives some credit for resolving the motorcycle debt (SOR ¶ 1.e) and satisfying the judgment issued against him (SOR ¶ 1.g), he does not receive full credit for initiating a good-faith effort to repay his creditors. Two of Applicant's creditors canceled his debts, but that does not appear to be the results of Applicant's efforts. He proffered that two additional debts were also canceled, but the evidence does not support Applicant's assertions. Applicant failed to provide a legitimate basis for his disputes of the debts alleged in SOR ¶¶ 1.f, and 1.i through 1.n. Applicant also failed to establish that his current finances are under control. Within the last year, Applicant has incurred at least five more delinquent accounts, despite earning a six-figure salary and reportedly having over \$3,000 in monthly disposable income. Based on the record, Applicant failed to meet his burdens of production and persuasion to mitigate the financial considerations concerns.

After a review of the record and a consideration of the whole-person factors at AG ¶ 2(d), I conclude that Applicant's financial problems are ongoing and the security concerns raised in the SOR remain. Applicant has held a security clearance for over ten years without incident. The favorable evidence in the record is not enough to mitigate the financial considerations concerns. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to regain national security eligibility in the future. Rather, it is recognition of the fact that financial issues have historically been a motivating factor behind acts of espionage. While a favorable decision is not warranted at this time, Applicant may present persuasive evidence of financial rehabilitation and reform in the future.

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.c - 1.e, 1.g:	For Applicant
Subparagraphs 1.b, 1.f, 1.h – 1.n:	Against Applicant

⁹ AG ¶ 19(c).

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