



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03921

Appearances

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

For Applicant: *Pro se*

11/03/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. Since January 2015, Applicant has been making payments toward the resolution of his largest debt, \$19,300 in medical expenses incurred by his four children. Clearance is granted.

Statement of the Case

On March 25, 2016, 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 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.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on June 22, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on June 28, 2016, and did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 6, without objection. On October 25, 2017, I opened the record to allow the parties to provide additional documentation. Applicant provided a statement updating the status of his delinquent accounts, which is admitted as AE A, without objection.

Procedural Matters

Revised Adjudicated Guidelines

While the case was pending decision, the Security Executive Agent Directive 4 was issued 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 was hired by a federal contractor in September 2014. Applicant completed a security clearance application in September 2014, but did not disclose any derogatory information. However, the ensuing investigation revealed and the SOR alleges that Applicant owes approximately \$21,600 in delinquent accounts. Of this amount, \$19,300, or 88% are for unpaid medical bills.

Between September 2001 and September 2014, Applicant worked for a car dealership. The medical bills alleged in the SOR were incurred between 2010 and 2013 for his four children. It is not clear from the record if Applicant and his family were covered by insurance when the expenses were incurred. In his January 2015 background interview, Applicant discussed the medical debt, indicating that the medical facility consolidated Applicant's outstanding balances into one account being collected by a law firm. Applicant entered into two payment agreements with the law firm in January 2015, one for accounts in his name and the other for the accounts in his wife's name. In his April 2016 answer to the SOR, and again in his October 2017 statement, Applicant indicated that he was still participating in the payment plan, paying \$100 monthly for both accounts. Applicant asked the law firm for a letter confirming this arrangement and his compliance with the terms of the plan. However, the law firm declined to do so.

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 national security clearance 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.

Directive ¶ E3.1.14 requires the Government to 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

Failure to meet one's 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 or sensitive information.³ Applicant admits that he owes the delinquent accounts alleged in the SOR. His admissions along with the credit reports in the record establish the Government's *prima facie* case that Applicant has demonstrated "an inability to satisfy debts"⁴ and, given the age of the alleged accounts, "a history of not meeting [his] financial obligations."⁵ Applicant has presented sufficient evidence that he is making a good-faith effort to repay his creditors and that he is involved in an ongoing payment

³ AG ¶ 18.

⁴ AG ¶ 19(a).

⁵ AG ¶ 19(c).

plan.⁶ Furthermore the majority of the debt is for medical expenses for his children, which are expenses beyond Applicant's control. He has acted responsibly by being involved in a payment plan for nearly three years.⁷

Based on the record, Applicant has mitigated the alleged concerns. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Typically, medical debt is not incurred under circumstances indicating financially irresponsible or reckless behavior. Applicant's accumulation of medical debt for his children does not reflect negatively on his current reliability, trustworthiness, or good judgment.

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
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Subparagraph 1.a – 1.n:	For Applicant
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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

⁶ AG ¶ 20(d) the individual initiated and is adhering a good-faith effort to repay overdue creditors.

⁷ AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . , and the individual acted responsibly under the circumstances.