



ISCR Case No. 17-00393

# Applicant for Security Clearance

## Appearances

For Government: Ross Hyams, Esq.

For Applicant: *Pro se*

12/19/2017

## 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. Applicant provided legitimate reasons for disputing the alleged accounts. Based on his overall financial record and testimony at hearing, it is unlikely Applicant incurred the delinquent debts alleged in the Statement of Reasons (SOR). Clearance is granted.

## Statement of the Case

On March 8, 2017, the DOD issued a SOR detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to an administrative judge at the Department of Defense Hearings and Appeals (DOHA) for a determination whether to revoke his security clearance.

<sup>1</sup> The DOD 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 timely answered the SOR and requested a hearing. On September 1, 2017, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses, and the parties complied.<sup>2</sup> At the hearing, convened on September 18, 2017, I admitted Government's Exhibits (GE) 1, and 3 – 4, and Applicant's Exhibits (AE) A through C, without objection. Applicant objected to GE 2, the summary of his background interview, citing the document's inaccuracy. I sustained the objection, GE 2 is excluded and I did not consider it.<sup>3</sup> DOHA received the transcript (Tr.) on September 26, 2017. After the hearing, Applicant submitted AE D and it is admitted without objection.

### **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, 57, has worked for a federal contractor since February 2012 as a machinist. He completed his first security clearance application in November 2015. He did not disclose any derogatory information. The ensuing investigation revealed five delinquent debts for approximately \$26,000 bearing Applicant's name.<sup>4</sup>

Applicant admits that he had two credit cards as alleged in SOR ¶¶ 1.a and 1.b. He opened the account alleged in SOR ¶ 1.a in 2001. Applicant was the only authorized user on the account. He used the credit card sparingly and paid the balance in full each month. In March 2014, the bank notified Applicant that his credit card account was past due. Applicant closed the account and disputed the charges as unauthorized. He completed the forms required by the bank to dispute the charges and considered the matter resolved. In March 2017, Applicant received an email indicating that several unsuccessful attempts had been made to access the online portal for the credit card. When Applicant called to investigate the issue, he was asked to provide personal identifying information. The inquiries made him uncomfortable and he refused to provide the information. Fearing a scam, he has not attempted to contact the creditor again. He disputed the accounts with credit reporting agencies without success.<sup>5</sup>

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<sup>2</sup> The prehearing scheduling order and the discovery letter are appended to the record as Hearing Exhibit (HE) I and II, respectively.

<sup>3</sup> Tr. 17.

<sup>4</sup> GE 1, 3-4.

<sup>5</sup> Tr. 22-28, 30-31, 33-36; AE B-C.

Applicant claims the credit card alleged in SOR ¶ 1.b is a fraudulent account. He admits having a credit card from the same bank that he opened in July 2003. He maintained the account in good standing until November 2016, when he closed the account. He had not used the card in almost ten years. The account alleged in SOR ¶ 1.b was opened in 2008 and was used through at least September 2011. In October 2017, Applicant received a letter from the creditor indicating that the account was closed, collections have ceased, and that Applicant has no further obligation regarding the account.<sup>6</sup>

The remaining three debts in the SOR, ¶¶ 1.c – 1.e, totaling \$233, are for medical accounts that Applicant asserts were covered by his medical insurance. In response to a July 2017 dispute filed with the credit reporting agencies, the debts were deleted from his credit reports.<sup>7</sup>

Aside from the alleged accounts, Applicant has maintained a favorable financial history. He has several income streams. In addition to the income from his job, \$46,000 annually without overtime, Applicant receives a pension from a previous job. He receives rental income from his home, which he paid off in early 2017. In comparison, Applicant's living expenses are low. He and his wife live in a recreational vehicle, which they park at campgrounds. Applicant has less than \$22,000 in consumer debt, \$20,000 of which is for a vehicle. Applicant has approximately \$150,000 in assets including his home and savings.<sup>8</sup>

### **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.

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

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<sup>6</sup> Tr. 28-30, 31-33; AE D.

<sup>7</sup> AE A-B; Answer.

<sup>8</sup> Tr. 37-46; GE 1.

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**

### **Guideline F, Financial Considerations**

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.<sup>9</sup> The record is sufficient to establish the Government’s *prima facie* case that Applicant has a history of not meeting financial obligations.<sup>10</sup> However, he has provided sufficient information to explain and mitigate the alleged concerns.

Applicant provided a legitimate basis for disputing the debts alleged in the SOR. He provided documentation of his disputes with the credit bureaus and the favorable results of his disputes for the debts alleged in SOR ¶¶ 1.b – 1.e.<sup>11</sup> Although the creditor in SOR ¶ 1.a has yet to resolve the account in Applicant’s favor, Applicant testified credibly that he did not incur the charges resulting in the delinquent account.

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> AG ¶ 19(c).

<sup>11</sup> AG ¶ 20(e).

Furthermore, the delinquent account is out of character with Applicant's history of responsible use of consumer credit.

Based on a consideration of the record as a whole, I have no doubts about Applicant's ability to properly handle and safeguard classified information. In reaching this conclusion, I have also considered the whole-person factors detailed in AG ¶ 2(d). Applicant is financially healthy and it is unlikely that his finances can be effectively used as a source of vulnerability or exploitation or duress.

### **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.e:    For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge