



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



In the matter of:)
)
) ISCR Case No. 17-02080
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2018

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. Applicant experienced financial problems during his eight-year marriage, which ended in 2017. These problems were exacerbated by extended periods of unemployment for Applicant and his ex-wife. Since the divorce, Applicant has initiated and adhered to a good-faith effort to repay his creditors. Clearance is granted.

Statement of the Case

On July 14, 2017, 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 that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to revoke his security clearance.

¹ 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 June 8, 2017.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on May 24, 2018, I admitted Government's Exhibits (GE) 1 through 6, and Applicant's Exhibits (AE) A through I, without objection. After the hearing, Applicant timely submitted AE J through M, which are also admitted without objection. DOHA received the transcript (Tr.) on June 6, 2018.

Procedural Matters

SOR Amendments

At the hearing, Department Counsel moved to amend SOR ¶ 1.e to conform to GE 2, a document from the IRS indicating that Applicant owes federal income taxes for the 2014 tax year, not the 2015 tax year as alleged. Applicant did not object and admitted to the amended allegation.²

Findings of Fact

Applicant, 47, has worked as a freelance facility security officer (FSO) for several federal contracting companies since late 2015. He completed his most recent security clearance application in April 2014 and disclosed ongoing financial problems, including delinquent accounts and his attempts to rehabilitate his delinquent mortgage. Based on Applicant's disclosures and the information developed during his background investigation, the SOR alleges that Applicant is indebted to five creditors for \$108,600 in delinquent debt, comprised of two credit cards (SOR ¶ 1.a \$11,708, SOR ¶ 1.c \$33,532); a past-due mortgage loan (SOR ¶ 1.b \$39,912); unpaid federal taxes SOR ¶ 1.e \$9,790, SOR ¶ 1.f \$11,654); and unpaid state taxes (SOR ¶ 1.g \$2,556). Applicant admits the SOR allegations.³

Applicant began his career as a teacher, earning \$30,000 annually. In November 2000, he began working for his father's federal contracting company, receiving an increase in pay to \$50,000 annually. Applicant admits that with the income increase his spending became frivolous and more out of control. However, as he began training to become an FSO, he decided to reign in his spending and reduced his use of consumer credit. In 2009, Applicant left his father's company and began working for another federal contracting company as an FSO.⁴

In May 2009, Applicant married. He entered the marriage with approximately \$35,000 in credit-card debt in good standing (SOR ¶¶ 1.a and 1.c), and became financially responsible for all of the family's financial obligations. Applicant's wife continued to pay her car loan, her student loans, and her daughter's private-school tuition. Applicant's wife was also responsible for arranging the preparation and filing of the couple's state and federal income tax returns. Applicant did not know his wife's

² Tr. 10-11.

³ Tr. 73-74; GE 1 – 6.

⁴ Tr. 75-76.

annual salary or the amount of income taxes she had withheld from her pay. Between 2009 and 2015, the couple filed using the married-filing-jointly status. Although Applicant reviewed the tax returns, he did not question the couple's federal or state income tax liabilities. For the 2016 income tax returns, the couple filed using the married-filing-separately status. Applicant filed his 2017 federal and state income tax returns using the single status. He owed \$350, which he paid.⁵

According to Applicant, the couple began to experience financial problems by the second year of their marriage as he realized that the lifestyle that his wife wanted required them to live beyond their means. In 2009, facing financial problems at home, Applicant used his then-employer's credit card to pay a household bill. When confronted by his employer, Applicant admitted his misconduct and paid the credit card balance. He was laid off six months after the incident. He regrets his poor judgment and vows to never repeat such conduct.⁶

Between March 2010 and July 2013, Applicant experienced a total of 28 months of unemployment. During his periods of unemployment, Applicant relied on his retirement savings, unemployment compensation, financial assistance from his parents, and the credit card alleged in SOR ¶ 1.c to support his family. Applicant attributes 35% of the alleged balance to charges made during the marriage. His wife did not contribute to the household expenses during these times. In addition to his unemployment, Applicant's wife experienced a number of health issues that resulted in her having to take periods of extended medical leave, which Applicant believes accumulated to approximately 24 months. Because she exhausted her vacation and sick leave, some of her medical leave was unpaid. During these periods, Applicant paid her expenses in addition to those of the household. Applicant admits that he allowed the credit cards alleged in SOR to become delinquent because he put his wife's and stepdaughter's needs above his own.⁷

Applicant's friends and family members noticed a change in Applicant's financial habits during his marriage. Applicant's cousin, who testified at the hearing and lived with Applicant prior the marriage, described Applicant's attention to financial details and how Applicant impressed upon the younger man the importance of maintaining fiscal responsibility. The same cousin lived with Applicant again after Applicant married. Applicant's cousin noticed a marked change in Applicant's behavior and noted the tension in the marriage caused by the household finances. Applicant's close friend and Applicant's father, both of whom also testified at the hearing, observed the same changes in Applicant's behavior.⁸

⁵ Tr. 77-79, 85-88, 94-95; GE 2; AE H.

⁶ Tr. 79, 89-90, 96; GE 1.

⁷ Tr. 79-81, 84-97; GE 1.

⁸ Tr. 20-65.

Applicant and his wife separated in July 2017 and their divorce was finalized in November 2017. Applicant voluntarily assumed financial responsibility for all of the marital consumer and tax debt. He chose to do so because he wanted to ensure that all of the financial obligations attributable to him were paid. He did not trust his ex-wife, whose job does not require a security clearance, to pay her share of their federal and state income tax liabilities and consumer debt. Since the divorce, Applicant has prioritized paying off these debt and rehabilitating his finances.⁹

To date, he has entered into a payment plan for the debt alleged in SOR ¶ 1.a, paying \$100 per month since at least June 2017. Applicant has rehabilitated the alleged mortgage, SOR ¶ 1.b, and the account is in good standing. He has also entered into an installment agreement with the IRS for \$500 per month to resolve the outstanding federal tax liabilities alleged at SOR ¶¶ 1.e and 1.f. Applicant provided documentation showing payments for the past 18 months. He has resolved his outstanding state tax liability alleged in ¶ 1.g. Applicant claims to be making payments on the debt alleged in SOR ¶ 1.c, a delinquent credit card for \$33,532. According to Applicant, he pays at least \$200 per month toward this account. Although the creditor declined to provide documentation corroborating the payment arrangement, the balance has decreased \$8,000 to \$25,517 as of May 2018.¹⁰

In 2017, Applicant earned approximately \$162,000. Each month he pays \$1,300 towards the resolution of his delinquent accounts. After paying his financial obligations, Applicant has approximately \$1,300 in disposable income each month. He currently maintains one credit card that he uses sparingly. Since his divorce, each witness testified that they have observed Applicant return to the responsible financial habits he had before his marriage. Applicant believes that his current finances are stable and that he lives within his means.¹¹

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

⁹ Tr. 70; AE A.

¹⁰ Tr. 66-70, 83, 89; AE A-M.

¹¹ Tr. 91-93.

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

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.¹² The record is sufficient to establish the government’s *prima facie* case that Applicant has a history of not meeting financial obligations.¹³ Between 2009 and 2010, Applicant’s financial problems became so acute that he used his corporate credit card to pay a household expense, an intentional financial breach of his

¹² AG ¶ 18.

¹³ AG ¶¶ 19(c) and 19(f).

employer's trust.¹⁴ However, he has provided sufficient information to mitigate the alleged concerns.

Applicant's financial problems occurred during his marriage between 2009 and 2017. He assumed financial responsibility for the household financial obligations and, at times his wife's personal financial obligations, to the detriment of his own. Applicant admits that he was overextended. He expressed regret and remorse for using his employer's credit card for personal use. He acknowledges that doing so showed poor judgment and impugned his trustworthiness. However, this is an isolated incident for which Applicant made restitution almost eight years ago. Even though his finances remained strained for the next several years he did not engage in similar conduct again.¹⁵

During his marriage, Applicant also experienced financial difficulty caused by events beyond his control, including 28 months of unemployment and his wife's periods of unpaid medical leave. Applicant has demonstrated that he acted responsibly in light of these circumstances to repay his creditors and rehabilitate his finances.¹⁶

Upon his separation and subsequent divorce in 2017, Applicant, understanding the importance of maintaining fiscal responsibility as a clearance holder, voluntarily assumed responsibility for all of the marital debt to ensure that all of his creditors were repaid. Applicant's actions show that he initiated and is adhering to a good-faith effort to resolve his delinquent accounts. He has entered into payment agreements to repay the credit-card balances alleged in SOR ¶¶ 1.a and 1.c, reducing the balances by \$1,300 and \$8,000, respectively. Applicant has refinanced and rehabilitated his home mortgage. He has continued to comply with the terms of the installment agreement he entered into with the IRS in December 2016 to pay the couple's and his outstanding federal income tax debt. He has paid the state tax liability incurred during the marriage in full.¹⁷

Based on a consideration of the record, 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). Applicants are not held to a standard of perfection. While Applicant made some financial missteps during his marriage, he has demonstrated that he understands the connection between financial responsibility and being a clearance holder. The Appeal Board has held that, "an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct," that is, actions which evidence a serious intent to effectuate the

¹⁴ AG ¶ 19(d).

¹⁵ AG ¶ 20(a).

¹⁶ AG ¶ 20(b).

¹⁷ AG ¶ 20(d).

plan.¹⁸ Applicant has done so, which in addition to his efforts to rehabilitate his finances, mitigates the security concerns raised by his delinquent accounts.

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.g: 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.

Nichole L. Noel
Administrative Judge

¹⁸ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).