



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



In the matter of:)
)
) ISCR Case No. 14-03212
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2015

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 demonstrated a good-faith effort to resolve his delinquent accounts. Clearance is granted.

Statement of the Case

On September 22, 2014, 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 or continue Applicant’s security clearance and recommended that the case be

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.

submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² At the hearing, convened on June 4, 2015, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A and B, without objection. After the hearing, Applicant timely submitted AE C through E, which were also admitted without objection. I received the transcript (Tr.) on June 11, 2015.

Findings of Fact

Applicant, 51, has worked for a federal contractor as a welder since February 2013. He also works as a part-time sheriff's deputy. On his security clearance application, also submitted in February 2013, Applicant disclosed unpaid state taxes. The ensuing investigation revealed that Applicant owed approximately \$16,000 on 11 delinquent accounts.³

Applicant's financial problems were caused by his frequent job changes between 2005 and 2013 to pursue better employment opportunities. Some of the jobs kept him away from home, requiring his wife to stop working so that she could be at home for the couple's two children. During this time, Applicant incurred his three largest debts. He fell behind on his child support obligation for his daughter, now 20, from a previous relationship. (SOR 1.e, \$4,000) According to the state's child support enforcement agency, Applicant is making regular and timely payments on the arrearage.⁴ An error made on Applicant's state income tax returns over a number of years resulted in the state filing four state tax liens against Applicant between 2005 and 2012, totaling \$4,700. (SOR ¶¶ 1.a-1.d) Applicant paid the outstanding state liability in February 2014, and the state has released the liens. Applicant and his wife now use a tax preparer to avoid problems in the future.⁵

The third large debt is the charged-off automobile loan. (SOR ¶ 1.f, \$6,300). Applicant purchased the vehicle with his brother-in-law in 2005 and made the payments on the loan. The brother-in-law assumed possession of the vehicle in 2009. Applicant thought his brother-in-law was making the loan payments. Applicant and his brother-in-law settled the outstanding account in June 2015. Applicant has disputed the debt alleged in SOR ¶ i.j (\$225) with a credit reporting agency, and the account has been deleted. Applicant denies owing the debts alleged in SOR ¶¶ 1.f through 1.i and 1.k, totaling \$775. These accounts remain unresolved. Applicant's most recent credit report,

² The discovery letter is appended to the record as Hearing Exhibit (HE) I.

³ Tr. 19-21; GE 1, 3-4.

⁴ The agency did not provide a remaining balance on the arrearage.

⁵ Tr. 21, 37-41; AE A, D.

dated June 2015, shows three new delinquent accounts, totaling \$600. Applicant is not familiar with the accounts.⁶

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(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 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

⁶ Tr. 41-48; GE 3-4; AE B, E.

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

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.”⁷ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant owes 11 delinquent accounts, totaling \$16,000. The debts are substantiated by the record, supporting findings that Applicant has a history of not paying his debts and that he had an inability to do so.⁸ However, he has submitted sufficient information to mitigate the security concerns raised by his finances. Applicant has demonstrated a good-faith effort to resolve his delinquent accounts, beginning well before the SOR was issued.⁹ Applicant resolved the alleged tax liens (SOR ¶¶ 1.a - 1.d) in February 2014. He is in good standing with his state’s child support enforcement agency. (SOR ¶ 1.e) He has also settled the charged-off automobile loan. (SOR 1.f) Although Applicant has several unresolved delinquent accounts, the total amount outstanding, approximately \$1,300, is minimal and does not represent a security risk.

I have no doubts 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’s period of financial problems is not indicative of financial irresponsibility, poor self-control, lack of judgment, or an unwillingness to follow rules and regulations. Having addressed 93% of the accounts alleged in the SOR, Applicant has demonstrated a favorable record of debt repayment. In light of his efforts, Applicant’s finances are no longer a security concern.

⁷ AG ¶ 18.

⁸ AG ¶¶ 19(a) and (c).

⁹ AG ¶ 20(d).

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, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.k:	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