



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



In the matter of:)
)
) ISCR Case No. 14-03348
)
Applicant for Security Clearance)

Appearances

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

11/15/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant did not intentionally falsify his February 2013 security clearance application. However, Applicant failed to mitigate the financial considerations concerns raised by his history of financial problems. He has not demonstrated a good-faith effort to resolve his debts or a history of financial rehabilitation or reform. Clearance is denied.

Statement of the Case

On November 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly

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.

consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be 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 5 and Applicant's Exhibits (AE) A through C, without objection. After the hearing, Applicant submitted AE D through I, which were also admitted without objection.³ I received the transcript (Tr.) on June 12, 2015.

Procedural Matter

SOR Amendment

Department Counsel moved to amend the SOR to correct a clerical error. Applicant received notice of the amendment in March 2015. On the original SOR, the document set forth a falsification allegation as paragraph 2, without the personal conduct introduction paragraph that typically precedes the allegation. The proffered amendment sought to correct that error. Applicant reaffirmed his admission of the allegation in his answer to the SOR amendment on April 6, 2015. He did not provide any additional documentation with his answer to the SOR amendment. At the hearing, Department Counsel's motion to amend the SOR was granted without objection from the Applicant.⁴

Findings of Fact

Applicant, 47, has worked for a federal contractor as a program manager since January 2013. On his security clearance application, submitted in February 2013, he disclosed \$68,700 in delinquent debt related to medical bills, consumer credit accounts, and an automobile loan. The ensuing investigation revealed that Applicant is indebted to six creditors for \$82,800.⁵

Applicant, who served two tours in the Army and one tour in the Army National Guard (ANG), was initially granted a security clearance in 1989. On his February 2013 security clearance application, Applicant disclosed that he may have had a security clearance revoked in 1994 while in the Army for failing to disclose a previous marriage. Documents from the then U.S. Army Central Adjudication Facility indicates that Applicant's security clearance was revoked in 1996 for his history of illegal drug use and the falsification of his 1994 security clearance application. At hearing, Applicant

² The Government's discovery letter, dated October 15, 2014, is appended to the record as Hearing Exhibit (HE) IIII.

³ The e-mails regarding the admissibility of the Applicant's exhibits are included in the record as HE IV.

⁴ The SOR amendment and Applicant's answer to the SOR amendment are included in the record as HE I and II, respectively.

⁵ Tr. 19-20; GE 1.

explained that he disclosed the details of his prior security clearance revocation to the best of his recollection.⁶

Applicant's financial problems began in 2004. During his last enlistment in the ANG, the Defense Finance and Accounting Service (DFAS) overpaid Applicant \$40,000 due to a misclassification of his duty status. (SOR ¶ 1.a) Between 2004 and 2015, Applicant made no efforts to repay the overpayment. In April 2015, Applicant contacted DFAS in an effort to make payment arrangements, but has been told there is no way for him to repay the debt. Applicant believes the debt is being resolved through the recapture of any income tax refund to which he may be entitled. He did not quantify the number of tax returns or the amount of money applied to the overpayments through this method.⁷

Applicant's financial problems became acute after a medical issue kept him out of work for 13 months between 2006 and 2007. Without his income as the primary earner, Applicant's household income decreased by 75%. Applicant relied heavily on credit cards to meet his financial obligations. He tried to reduce his expenses by having his vehicle voluntarily repossessed. The deficiency balance on the auto loan is alleged in SOR ¶ 1.b (\$24,700). Applicant contacted the creditor to make payment arrangements, but the creditor informed Applicant that there is no longer any record of the account. The creditor discovered another delinquent account belonging to Applicant for \$524, which he settled in June 2015 for a reduced balance.⁸

The SOR also alleges that Applicant is indebted to a creditor for a delinquent cell phone bill. (SOR 1.d, \$2,000) Applicant contacted the creditor to propose a \$25 per month payment plan to begin June 2015. He did not provide evidence of any payments. Using the contact information provided on GE 4, Applicant attempted to contact the creditors for the medical bills alleged in SOR ¶¶ 1.f (\$190) and 1.g (\$116) to make payment arrangements. However, the contact information was invalid and he has not been able to make contact with the creditor. The SOR alleges in SOR ¶¶ 1.c (\$15,985) and 1.e (\$1,864) that Applicant is indebted to two credit card companies. However, he is listed an authorized user on both accounts and is not liable for the outstanding balances.⁹

Beginning in January 2015, Applicant and his wife attended a nine-week financial course. Applicant testified that he is current on all of his recurring bills, except for his student loans. In 2012, Applicant began attending school with the belief that he was eligible for benefits under the GI bill. After starting school, he learned that the debt he owed to DFAS made him ineligible to receive the tuition assistance benefit. Applicant borrowed money to complete his education. He paid the loan until 2013 when his father-

⁶ Tr. 19-20, 34-40, 58-65; GE 1, 5.

⁷ Tr. 21, 25, 41-44.

⁸ Tr. 21-25, 44-46; AE A-D, I.

⁹ Tr. 26-31, 46-48; GE 3-4; AE C, E, I.

in-law became ill and subsequently died. Applicant believes that he spent \$5,000 providing assistance to his in-laws. In his post-hearing submission, Applicant indicated that his student loans are no longer in default. He provided proof of one \$100 payment made in June 2015. He did not provide details of his long-term payment plan.¹⁰

Applicant provided several character letters from individuals who know Applicant through his work as a federal contractor or his work as a part-time sheriff's deputy. Each character reference speaks of Applicant's honesty and integrity. The letter writers who are aware of Applicant's financial problems do not believe they would be a potential source of vulnerability or exploitation.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(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

¹⁰ Tr. 50-54; AE A, F-G, I.

¹¹ AE H.

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

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”¹² Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹³ The Government does not have to prove that an applicant poses a clear and present danger to national security,¹⁴ or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.¹⁵

Applicant has a history of financial problems beginning in 2004. As the result of a DFAS error which resulted in a \$40,000 overpayment to Applicant in 2004 and 13 months of unemployment between 2006 and 2007, Applicant accumulated debt he could not pay. To date, the majority of the debts remain unresolved. These facts are enough to establish the Government’s *prima facie* case that Applicant has both a history of not paying his debts and an inability to do so.¹⁶

The record does not contain sufficient evidence to rebut the financial considerations security concerns. Although Applicant’s financial problems were caused by events beyond his control, he did not submit sufficient evidence to show that he acted responsibly in light of his circumstances. Between 2004 and the hearing in June 2015, Applicant did not take any steps to resolve his delinquent accounts. The steps he has taken in the recent months to address his delinquent accounts do not constitute a good-faith effort to resolve his indebtedness. Applicant has not established a meaningful track record of debt repayment or financial rehabilitation.

¹² AG ¶ 18.

¹³ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹⁴ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹⁵ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹⁶ AG ¶¶ 19(a) and (c).

Applicant's current ability to live within his means and his participation in a financial management class do not resolve the issue. Because his delinquent debt is unresolved, his financial problems are ongoing and, consequently, his finances are not under control.

Guideline E, Personal Conduct

An applicant's personal conduct becomes a security concern when he acts in a way that raises questions about his judgment or his ability to protect classified information.¹⁷ The SOR alleges that Applicant intentionally falsified his February 2013 security clearance application by providing misinformation regarding his security clearance revocation in the mid-1990s. While Applicant provided erroneous information about the revocation, I find that he did not do so with the intent to deceive the Government. It is not unreasonable that he could not recall the specifics of the revocation accurately given that it occurred almost 20 years ago. Applicant properly disclosed potentially adverse information on his most recent security clearance application. His disclosure provided sufficient notice to the Government of a potentially adverse action related to his prior possession of a security clearance.

After reviewing the record, I have 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). The favorable information in the record, regarding Applicant's work performance and good character, is not sufficient to mitigate the financial concerns raised in the SOR.

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.b, 1.d: | Against Applicant |
| Subparagraphs 1.c, 1.e, 1.f -1.g: | For Applicant |
| Paragraph 2, Personal Conduct: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |

¹⁷ AG ¶ 15.

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