



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



In the matter of:)
)
) ISCR Case No. 14-05781
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2015

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. The favorable information in the record regarding Applicant’s financial history is enough to rebut the concerns raised in the SOR. Clearance is granted.

Statement of the Case

On February 16, 2015, 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 submitted to an administrative judge for a determination whether to revoke or deny Applicant’s security clearance.

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.

Applicant timely answered the SOR and requested a decision on the written record in lieu of a hearing. Department Counsel timely exercised their right to request a hearing in this case.² On July 22, 2015, 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.³ The parties complied with the terms of the order.⁴ At the hearing, convened on August 13, 2015, I admitted Government's Exhibits (GE) 1 through 5, without objection. After the hearing, Applicant timely submitted AE A through E, which were also admitted without objection.⁵ I received the transcript (Tr.) on August 19, 2015.

Findings of Fact

Applicant, 60, has worked for a federal contractor as a mail courier for 28 years. He has held a security clearance since 1990 without incident. During the course of his most recent periodic reinvestigation, the Government obtained a May 2013 credit report bearing Applicant's last name and social security number indicating that Applicant had at least five delinquent accounts totaling \$7,000. Based on this and another credit report dated September 2014, the SOR alleges that Applicant is indebted to six creditors for approximately \$11,500. In response to the SOR, Applicant denied the alleged debts on the grounds that they do not belong to him.⁶

As part of its case-in-chief, the Government offered three credit reports. Applicant's last name and social security number is correct on each report. But, each report was run using a different variation of Applicant's name. None of the reports were run using his forename, middle name or initial, and surname. All three of the reports have other addresses listed for Applicant, who has lived at the same address, his parents' home, his entire life. Two of the credit reports list the same but incorrect birthdate for Applicant. The specific defects of each credit report are described in the following table:

² Correspondence regarding the conversion of the case to a hearing is appended to the record as Hearing Exhibit (HE) I.

³ The prehearing scheduling order is appended to the record as HE II.

⁴ The discovery letter, dated July 6, 2015 is appended to the record as HE III.

⁵ Correspondence regarding Applicant's post-hearing submissions are appended to the record as HE IV.

⁶ Tr. 22-23; GE 1-5; AE A.

Exhibit No.	Date	Name Variation	Reported Alias	Reported DOB	No. of Addresses Reported
GE 3	June 29, 2015	Nickname Middle Initial Surname	Surname Middle Initial Forename	Wrong Month Wrong Date Wrong Year	5
GE 4	Sept. 18, 2014	Nickname Surname	None	None	3
GE 5	May 1, 2013	Nickname Middle Name Surname	Forename Surname Middle Initial	Wrong Month Wrong Date Wrong Year	2

In addition to the credit reports, the Government also offered Applicant's security clearance application and a summary of his background interview. The security clearance application does not contain any adverse information regarding Applicant's financial history. The background interview summary indicates that Applicant had no knowledge of the delinquent accounts being reported in the May 2013 credit report.

In response to the Government's evidence, Applicant reiterated his denials. He admitted that five to seven years ago he accumulated some debt. It is unclear if the debts to which Applicant referred were delinquent or if he merely carried a level of debt that made him uncomfortable. With the help of his father, Applicant developed and executed a repayment strategy that allowed him to pay off the debts over the course of one year. Applicant testified that after paying off his debts, he has not had a credit card for the last six years. The financial records showing Applicant's debt repayments have long since been destroyed and his father died in 2012. However, Applicant's sister provided a letter corroborating Applicant's testimony.⁷

Applicant, who earns approximately \$20,000 annually, testified that he lives within his means. He has some savings because his mother sets aside some of the rent he pays for that purpose.⁸

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

⁷ Tr. 24-28, 30; AE B.

⁸ Tr. 28, 41-44.

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 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.”⁹ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

⁹ AG ¶ 18.

The SOR alleges that Applicant owes six delinquent accounts, totaling \$11,500. Because Applicant denied all of the SOR allegations, Department Counsel has the burden of proving the controverted facts.¹⁰ To that end, Department Counsel offered, three credit reports, GE 3 through 5, bearing Applicant's last name and social security number. These credit reports are enough to establish the Government's *prima facie* case that Applicant has a history of not paying his bills and that he has demonstrated an inability or unwillingness to do so.¹¹

Although the credit reports are sufficient to satisfy the government's burden of proof, this does not mean the credit reports are unassailable and not subject to dispute. Each of the three credit reports contains discrepant identifying information that calls into question the accuracy and reliability of each report. The flaws in the credit reports are significant and provide a reasonable basis for Applicant to dispute the legitimacy of the delinquent debts in the SOR.¹²

When the adverse evidence in the record, three credit bureau reports, is weighed against the evidence favorable to Applicant — his credible testimony regarding his financial history, his sister's corroboration of those statements, as well as Applicant's long employment and clearance histories — the favorable evidence is enough to rebut, explain, and mitigate the financial considerations concerns.

Accordingly, 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). The record does not support a finding that Applicant has engaged in behaviors that suggest that he is irresponsible, unreliable, or unable to properly handle or safeguard classified information.

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.f: For Applicant

¹⁰ DOD Directive, Additional Procedural Guidance ¶ E3.1.14.

¹¹ AG ¶¶ 19(a) and (c).

¹² AG ¶ 20(e).

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