



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



In the matter of:)
)
) ISCR Case No. 14-06963
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2016

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’s delinquent debts were caused by events beyond his control and he acted responsibly to resolve them. He has also demonstrated a good-faith effort to resolve his delinquent accounts. Clearance is granted.

Statement of the Case

On June 10, 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 hearing. On December 29, 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.² Department Counsel provided proposed exhibits to the Applicant in advance of the hearing.³ At the hearing, convened on January 14, 2016, I admitted Government's Exhibits (GE) 1 through 3 and Applicant's Exhibits (AE) A through H, without objection. After the hearing, Applicant submitted AE I through L, which are also admitted without objection.⁴ DOHA received the transcript (Tr.) on January 22, 2016.

Findings of Fact

Applicant, 40, has worked for a federal contractor as a heavy truck driver since May 2014. He served in the Air Force from 1994 to 2000 and held a security clearance, without incident, during his enlistment. He completed a security clearance application in May 2014, disclosing two delinquent accounts. The ensuing investigation revealed that Applicant owed approximately \$16,000 on ten delinquent accounts. Each account was alleged on the SOR and Applicant admitted responsibility for them.⁵

In 2010, Applicant was involved in a serious car accident that required extensive medical care. As he recovered, he believed that his medical bills were taken care of by his insurance or by his parents, who were helping him through the ordeal. During his interview with the background investigator, Applicant learned that the debts in SOR ¶¶ 1.d, 1.e 1.f, and 1.h, totaling \$12,600, were unpaid bills from the accident. After the interview, Applicant pulled copies of his credit reports so that he could learn the full extent of his delinquent debt. In November 2015, he contacted an attorney for help resolving the accounts.⁶

Applicant took a \$10,000 withdrawal from his retirement account to pay down the delinquent accounts, including some not alleged in the SOR. At the end of 2015, Applicant began rehabilitating the student loan alleged in SOR ¶ 1.a (\$1,630). He incurred the student loan in 2010 after taking college classes. Applicant made a \$125 down payment on the account in May 2015 and has made timely monthly payments since December 2015. The account is in good standing. The debts alleged in SOR ¶¶ 1.b and 1.g, totaling \$1,600, were for two pay-day loans Applicant took out during a short period of unemployment between July and November 2013. The creditor consolidated the accounts along with a third that was not alleged in the SOR and Applicant paid them off in November 2015. The creditor consolidated the medical debts alleged in SOR ¶¶ 1.d, 1.f, 1.h and agreed to settle the accounts for \$5,400. Applicant made a \$3,000 down payment on the account and will resolve the remaining balance,

² The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

³ The discovery letter, dated November 30, 2015, is appended to the record as HE II.

⁴ Correspondence regarding Applicant's post-hearing submission is appended to the record as HE III.

⁵ Tr. 19-20, 31; GE 1-3.

⁶ Tr. 20-23.

now \$2,200, through \$250 monthly payments. Applicant has made timely payments since January 2016. In November 2015, Applicant settled SOR ¶ 1.e. He has also paid the accounts alleged in SOR ¶¶ 1.c, 1.i, and i.j, totaling \$396.⁷

Applicant lives within his means and is current on all of his financial obligations.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 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.

⁷ Tr. 21-22, 31-39, 44; AE A-L.

⁸ Tr. 29-30.

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.

The SOR alleges that Applicant owes approximately \$16,000 on 10 delinquent accounts. Applicant’s admissions and the credit reports in the record establish the government’s *prima facie* case that Applicant has a history of not paying his bills.¹⁰ Applicant incurred debt due to events beyond his control, a serious car accident in 2010 and a period of unemployment for five months in 2013. He also acted responsibly to resolve the delinquent accounts after he learned of them during his background investigation. Applicant sought professional advice on resolving the accounts. To date, he has rehabilitated the student loan account alleged in SOR ¶ 1.a; arranged a payment plan to his largest creditors holding SOR ¶¶ 1.d, 1.f, and 1.h; settled SOR ¶ 1.b, 1.e, and 1.g; and, paid SOR ¶¶ 1.c, 1.i, and i.j in full. Applicant’s actions also demonstrate a good-faith effort to resolve his delinquent accounts. With the SOR debts resolved, Applicant’s finances appear to be under control.¹¹

After reviewing the record, I have no doubts about his suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant’s delinquent debts are not indicative of reckless or irresponsible behavior. Nor is the delinquent debt and indication that Applicant is incapable of handling, protecting, or safeguarding classified information.

⁹ AG ¶ 18.

¹⁰ AG ¶ 19(c).

¹¹ AG ¶¶ 20(b) and (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.j:	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