



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



In the matter of:)	
)	
)	ISCR Case No. 14-07030
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. While Applicant’s financial records shows some derogatory information, it does not reflect negatively on his current security worthiness. Clearance is granted.

Statement of the Case

On May 30, 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 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 answered the SOR and requested a decision without a hearing.² The Government submitted its written case on September 2, 2015. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on September 25, 2015, and provided documents in response. The case was assigned to me on November 13, 2015. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 5, without objection. The document identified as GE 6 is excluded for the reasons explained below. The documents provided by the Applicant are admitted as Applicant's Exhibits (AE) A through G, without objection.

Procedural Issues

GE 6 is a report of investigation (ROI) summarizing the interview Applicant had with a background investigator during his June 2014 investigation. The interview is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions Applicant that if he fails to object to the admission of the interview summary in his response to the FORM that his failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM does not demonstrate that he understands the concepts of authentication, waiver, and admissibility. It also does not establish that he understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 6 is inadmissible and I have not considered it.

Findings of Fact

Applicant, 62, has worked for a federal contractor since 2002 as an aviation mechanic. He served in the U.S. Navy from 1974 to 1978. He completed his security clearance application in May 2014, disclosing that he failed to pay or file his state taxes in 2012. The ensuing investigation revealed some other derogatory information.³

Specifically, the SOR alleges Applicant failed to file, as required, his 2012 and 2013 federal and state tax returns. In his answer to the SOR, Applicant provided copies of the returns, which were filed in February 2014 and October 2014, respectively. For reasons that are unclear from the record, Applicant, who has resided in State 1 since 2002, was required to file state income tax returns in State 2 as well as State 1 for the tax year 2012. He received a \$3,000 federal tax refund, which offset his \$3,000 income tax liability for State 2 that year. The following year, he was only required to file an income tax return in State 1. He owed a federal tax liability of \$130 and received a \$966 refund from State 1. He filed his 2014 federal and State 1 income tax returns in May 2015. He received refunds of \$1,600 and \$1,000, respectively.⁴

² GE 3.

³ GE 4-5.

⁴ GE 3-5.

The SOR also alleges that Applicant owes \$1,500 on six delinquent debts.⁵ Applicant admits to owing four of the alleged debts, SOR ¶¶ 1.b through 1.d and 1.g, and claims to have paid them.⁶ He provided documentation corroborating the resolution of SOR ¶¶ 1.b through 1.d, totaling \$700.⁷ Applicant earns approximately \$70,000 annually. Aside from GE 5, a June 2014 credit report, the record contains no other evidence about Applicant's financial history.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

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.

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).

⁵ GE 5, the only credit report in the record, only supports three of the SOR allegations, SOR ¶¶ 1.c – 1.e. The basis for the SOR allegations in ¶¶ 1.b, 1.f, and 1.g is unclear.

⁶ GE 3.

⁷ Applicant provided other financial documentation with his responses to the SOR and the FORM including receipts from medical providers, billings statements from utility companies, and bank statements from August and September 2015. However, he did not provide any explanation as to the relevance of the documents. (GE 3, AE C, F-H)

Analysis

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.”⁸

The SOR alleges Applicant failed to file his 2012 and 2013 tax returns as required. While he did not file the returns timely, he filed them before the issuance of the SOR. The record does not contain any evidence to suggest that Applicant has any other outstanding federal or state tax returns or unpaid liabilities. He does not appear to have engaged in any behavior to suggest tax evasion. Although he owed a tax liability to State 2 in 2012, that appears to be an aberration. There is no indication that Applicant is improperly managing his federal or state tax obligations. Applicant’s late filing of his 2012 and 2013 tax returns does not reflect negatively on his current security worthiness.

The SOR also alleges Applicant owes \$1,500 on six delinquent accounts. At a minimum, the existence of the delinquent accounts suggests that Applicant has demonstrated an unwillingness to pay his bills.⁹ He has provided sufficient documentation to show that he has resolved the debts alleged in SOR ¶¶ 1.b through 1.d. The amount of the remaining unresolved delinquent debt, around \$800, is not likely to be a source of exploitation or vulnerability for Applicant. Even with these three remaining delinquent accounts it appears that his finances are otherwise under control.¹⁰

Based on the record, I have no doubts about Applicant’s security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. Applicant’s finances may not be perfect, but the blemishes on his credit record do not suggest that Applicant is irresponsible or incapable of following the rules related to the safeguarding and handling classified information.

⁸ AG ¶ 18.

⁹ AG ¶ 19(a).

¹⁰ AG ¶¶ 20(a) and (c).

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

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge