



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



In the matter of:)
)
) ISCR Case No. 14-06927
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
Desiree Demers, Personal Representative

04/25/2016

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 has demonstrated a good-faith effort to resolve his delinquent accounts. He has also demonstrated financial reform and rehabilitation. Clearance is granted.

Statement of the Case

On July 24, 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. Department Counsel timely converted the case to a hearing as allowed under Directive ¶ E3.1.7.² 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.³ Department Counsel complied with the terms of the order.⁴ At the hearing, convened on January 13, 2016, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through D, without objection. After the hearing, Applicant submitted AE E through Q, which are also admitted without objection.⁵ I received the transcript (Tr.) on January 19, 2015.

Findings of Fact

Applicant, 29, has worked for a federal contractor since June 2013. Initially hired as a general maintenance worker, Applicant received a promotion to a carpenter position in October 2015. Applicant submitted a security clearance application in June 2013. The ensuing investigation revealed several delinquent accounts in Applicant's name. The SOR alleges that Applicant owes \$28,900 on 14 accounts.⁶

Applicant incurred the debts alleged in the SOR between 2006 and 2010. From 2005 to 2006, Applicant attended a trade school. He financed his education with three student loans (SOR ¶¶ 1.l – 1.n). In 2013, Applicant entered a rehabilitation program for the defaulted loans. Since completing the 10-month rehabilitation program, Applicant has made all of his loan payments on time and the accounts are in good standing.⁷

The largest delinquent account alleged in the SOR is for a set of repossessed tools Applicant initially purchased in 2010 for \$4,100. Applicant made payments on the tools until March 2012, when the tools were repossessed. The account, which now has a balance of \$6,600 because of accruing interest, has bounced between the original creditor and a collection agency. Applicant believes that SOR ¶¶ 1.a, 1.g, and 1.k are the accounts held by the collection agencies. Applicant has been working with the original creditor, who now holds the account, since 2012 to reach a repayment agreement. The crux of Applicant's dispute with the creditor is that he believes the tools were wrongfully repossessed by one of the creditor's franchisees, who is no longer in business. Applicant's most recent contact with the creditor occurred in January 2016.

² Tr. 6.

³ The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

⁴ The discovery letter, dated November 30, 2015, is appended to the record as HE II.

⁵ Correspondence regarding Applicant's post-hearing submission is appended to the record as HE III.

⁶ Tr. 19, 35; GE 1-5.

⁷ Tr. 29, 42-43; AE Q.

The account remains unresolved, but Applicant plans to pay it once he and the creditor are able to reach mutually acceptable terms.⁸

From 2008 to 2010, Applicant was married to his first wife. He believes that his financial problems and the majority of the debts alleged in the SOR occurred during this marriage. Applicant was the only source of income for the couple. He supported his wife while she was in school. Because she was unable to obtain credit on her own, Applicant opened several credit accounts for her benefit, including the accounts alleged in SOR ¶¶ 1.j (\$1,044), 1.c (\$2,759), and 1.d (\$488). Applicant paid SOR ¶ 1.j in 2013. Initially, Applicant thought that his ex-wife should bear responsibility for the accounts he opened for her. He has come to understand that he is solely responsible for any accounts he opens in his name. Accordingly, he also paid SOR ¶ 1.d and has entered into a payment plan for the debt alleged in ¶ 1.c.⁹

Applicant began dating his current wife in 2011 and they married in 2014. They have a household income of \$130,000 and a monthly disposable income between \$2,500 and \$3,000. Applicant and his wife have been working to resolve Applicant's delinquent accounts and rehabilitate his finances. In addition to SOR ¶ 1.c and 1.d, Applicant has also resolved ¶¶ 1.e – 1.f, and 1.h -1.i. Applicant and his wife live within their means. They are able to pay their recurring bills timely in addition to accruing short term and retirement savings.¹⁰

Applicant is performing well in his position. He is well regarded by his supervisors and has received several awards for his work. He has also received a letter of appreciation from his military client. Applicant is viewed by all to be trustworthy, and dependable.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

⁸ Tr. 26, 40-42, 46-48; AE D, F.

⁹ Tr. 21, 37, 49-59; AE H.

¹⁰ Tr. 19-20, 30-32, 43-44; AE I, O.

¹¹ AE B-C, K, M-N.

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.”¹² 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 \$28,900 in delinquent accounts. However, the record supports Applicant’s contention that the debts alleged in SOR ¶¶ 1.a, 1.g,

¹² AG ¶ 18.

and 1.k are duplicates of the account alleged in SOR ¶ 1.b for the repossessed tools.¹³ Accordingly, those allegations are decided in Applicant's favor. Applicant's admissions and the credit reports in the record establish a *prima facie* case that Applicant had a history of not meeting his financial obligations and that he demonstrated an unwillingness to pay his bills.¹⁴ However, Applicant has submitted sufficient information to mitigate the security concerns. Applicant resolved the account alleged in SOR ¶ 1.j two years before the SOR issued. He has rehabilitated his student loans (SOR ¶¶ 1.l-1.m) and demonstrated a positive payment history. With the help of his wife, Applicant has made a good-faith effort to repay his creditors. He has entered in to a payment plan for the debt alleged in SOR ¶ 1.c and paid the debts alleged in ¶¶ 1.d- 1.f and 1.h and 1.j.¹⁵ Only one debt, SOR ¶ 1.b, remains unresolved. However, Applicant has been in contact with the creditor since 2012 to negotiate terms of a payment plan. I am confident he will follow through with any payment arrangement. Applicant's finances are now under control. Furthermore, the amount of the debt, \$6,600 is unlikely to be a source of vulnerability or exploitation.¹⁶

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 wife is a good influence on him. He is now in a relationship where he is able to share the financial responsibilities of running a household with a responsible partner. With his wife's help, Applicant has been able to rehabilitate his finances. Given the state of their current finances, it is unlikely that Applicant will find himself in similar financial trouble again. This, along with the favorable information in the record about Applicant's job performance mitigates the security concerns alleged 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, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.n:	For Applicant

¹³ AE F, L, P.

¹⁴ AG ¶¶ 19(a) and (c).

¹⁵ AG ¶ 20(d).

¹⁶ AG ¶ 20(c).

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