



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



In the matter of:)
)
) ISCR Case No. 15-00480
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Kenneth M. Roberts, Esq.

05/12/2016

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 financial problems were caused by a series of events beyond his control, the most significant being the decline in the housing market and credit crisis of the late 2000s. Applicant sought professional help to resolve his financial problems, which now appear to be under control. He also demonstrated a good-faith effort to resolve his delinquent accounts. Clearance is granted.

Statement of the Case

On August 20, 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 continue

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's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

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 The parties complied with the terms of the order.³ At the hearing, convened on January 14, 2016, I admitted Government's Exhibits (GE) 1 through 6 and Applicant's Exhibits (AE) A through BB, without objection. After the hearing, Applicant submitted AE CC through EE, which were also admitted without objection.⁴ I received the transcript (Tr.) on January 22, 2015.

Findings of Fact

Applicant, 52, has worked for a federal contractor since 1985. He received a security clearance that same year. In 1987, his clearance was upgraded. In November 2013, Applicant reported to his facility security officer (FSO) that he was in the process of executing a short sale on his home to avoid foreclosure. This report resulted in the FSO filing an incident report in the Joint Personnel Adjudication System (JPAS) and forwarding a letter to the Defense Industrial Security Clearance Office (DISCO) in December 2013. Applicant completed his most recent security clearance application in February 2014. He disclosed unpaid federal taxes related to early withdrawals from his 401K in 2010 and 2011, the 2013 short sale of his home, delinquent credit card accounts, and unpaid utility bills. He also provided an explanation for his financial problems in the additional comments section of the security clearance application. The resulting investigation confirmed these facts. The SOR alleges that Applicant is indebted to six creditors for approximately \$30,000. The majority of the debt, \$29,000, is for two delinquent credit card accounts.⁵

Applicant's financial problems began after his divorce in 1999. He assumed the marital debt to end the union quickly. Applicant resolved the marital debts and assumed primary custody of the couple's two children until 2003, when his daughter decided to live with his ex-wife. After his daughter moved, Applicant fell into a deep depression and let some of his financial obligations fall behind. A co-worker confronted Applicant about his depression, which prompted him to educate himself about the illness and get medical help. Applicant also decided to return his attention to his financial issues. He refinanced his home to pay off some debt and fix up the house. The home was worth \$400,000 and Applicant's new mortgage, an interest-only loan, was for \$204,000. Applicant intended to stay in the home only until his son graduated from high school, at

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. 24-25; GE 1-6.

which time he would sell the home and use the proceeds to pay for his son's college education.⁶

Shortly after Applicant refinanced the home, the real estate market collapsed and the value of his home plummeted, becoming worth less than its \$204,000 mortgage. Applicant continued to pay the mortgage on the home and his credit card accounts. However, the interest rate on his refinanced mortgage began to increase as did the interest rates on his credit cards. Soon, Applicant could not afford the minimum payments on his accounts. In 2010 and 2011, Applicant withdrew money from his 401K to pay down some of his debt. In 2012, he stopped paying his mortgage in effort to obtain a mortgage modification. Although he received the loan modification, he still could not afford the modified terms of loan. He was able to make only three payments before he allowed the loan to become delinquent. Applicant consulted a real estate agent about executing a short sale. Applicant completed the short sale of his home in 2013 and the mortgage company forgave the deficiency balance. He then turned his attention to resolving his other delinquent accounts.⁷

Initially, Applicant considered filing for Chapter 7 bankruptcy protection. However, after consulting an attorney, Applicant learned that he did not have enough debt to qualify for a Chapter 7 petition. He also realized that he could not afford the payments required under a Chapter 13 petition, which would have been between \$1,200 and \$1,500 per month. Applicant then consulted another attorney for help negotiating settlements on his credit card debts (SOR ¶¶ 1.a. and 1.b). Applicant's attorney contacted the creditor holding SOR ¶ 1.a (\$18,171) and learned that the creditor forgave the debt in 2014. However, Applicant had not received the 1099-C Cancellation of Debt form issued by the creditor. Applicant realizes that the debt forgiveness requires him to amend his 2014 federal income tax returns. With this disposition, Applicant's attorney advised him that the debt is considered resolved.⁸

Applicant's attorney then contacted the creditor holding SOR ¶ 1.b (\$10,895) in September 2015 and learned that the debt was no longer collectible. Despite this, Applicant asked his attorney to negotiate a settlement on the account. The creditor agreed to settle for 40% of the outstanding balance. Applicant intended to pay the settlement with a withdrawal from his 401K. By law, he could only withdraw \$3,000. The creditor would not agree to settle for that amount. After evaluating the consequences of implementing a payment plan, Applicant's attorney advised him that given the circumstances, he should not make further efforts to resolve the account. Applicant has paid the debts alleged in SOR ¶¶ 1.c –1.d, and 1.f, totaling \$737. Applicant disputed the mobile phone debt in SOR ¶ 1.e (\$471) with the creditor because the number attached to the account did not belong to him.⁹

⁶ Tr. 25-30, 60-64; AE L.

⁷ Tr. 53-55, 64-69; GE 2.

⁸ Tr. 37-47; 55-57, 59; AE A.

⁹ Tr. 30-77, 57-58; GE 4; AE A, F-K.

Applicant earns approximately \$73,000 annually and he has \$120,000 in retirement savings. Applicant continues to provide financial support, including health insurance, for his two children, now 24 and 21. After paying his recurring bills, he has disposable income of \$342 each month. In January 2016, Applicant completed a financial counseling class. He has also enrolled in a credit monitoring service. As a 31-year employee of his company, Applicant has developed a good reputation for his integrity, trustworthiness, reliability, and security consciousness. Since his 2013 report, Applicant has provided regular updates to his FSO about the status of his financial issues.¹⁰

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

¹⁰ Tr. 16-20, 47-50, 59, 71; AE M, O-EE.

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.”¹¹ 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 \$33,000 on six delinquent accounts. 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 inability to pay his bills.¹² However, Applicant has submitted sufficient information to mitigate the security concerns raised by his financial history. Applicant’s financial problems were caused by events beyond his control between 1998 and 2013: his divorce and a period of depression caused by issues with his children. These problems caused Applicant to accumulate debt, which he managed until the housing market downturn and credit crisis of the late 2000s. Applicant acted responsibly by consulting real estate and legal professionals for advice.¹³

With the help and advice of his attorney, Applicant was able to resolve the largest debts alleged, SOR ¶¶ 1.a and 1.b.¹⁴ Mitigation in this instance is not diminished by the fact the SOR ¶ 1.b remains unpaid. Applicant made a reasonable offer to settle debt despite its being legally uncollectible and the creditor chose to reject the offer. Applicant’s efforts to make payments on SOR ¶ 1.b show a good-faith effort to resolve his delinquent accounts, which is bolstered by his payment of SOR ¶¶ 1.c – 1.d, and 1.f. Applicant provided a legitimate dispute for the debt alleged in SOR ¶ 1.e.¹⁵ With the

¹¹ AG ¶ 18.

¹² AG ¶¶ 19(a) and (c).

¹³ AG ¶ 20(b).

¹⁴ AG ¶ 20(c).

¹⁵ AG ¶ 20(e).

debts in the SOR resolved, Applicant's finances seem to be under control and no longer a source of concern.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 has held a security clearance for 31 years without incident. He has developed a reputation for reliability and truthfulness. Applicant has also shown that he takes his responsibility as a clearance holder seriously. He self-reported his financial problems to his facility security officer in 2013 and has since provided periodic updates. These disclosures decrease the risk that Applicant's financial problems will be a source of vulnerability or exploitation. Accordingly, Applicant has presented sufficient information to mitigate the financial 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.f:	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

¹⁶ AG ¶ 20(c).