



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



In the matter of:)
)
) ISCR Case No. 14-06527
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant has \$130,000 in unresolved delinquent debt. Clearance is denied.

Statement of the Case

On May 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 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 July 27, 2015. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on September 10, 2015, and did not respond. The case was assigned to me on November 18, 2015. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 5, without objection. GE 6 is excluded as explained below.

Procedural Issues

GE 6 is a report of investigation (ROI) summarizing the interview Applicant had with a background investigator during his January 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, or 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, 57, has worked for a federal contractor as a mechanic since November 2010. He completed his security clearance application in January 2013 and disclosed that his home was foreclosed in 2009. The ensuing investigation revealed that Applicant owes \$130,000 on 17 delinquent accounts.³

Applicant maintained a favorable credit history until 2008. In December 2005, he bought a home. Shortly thereafter, his father-in-law immigrated to the United States to live with Applicant and his wife. Applicant's father-in-law died a year later. Applicant's wife wanted to bury her father in his native country. To accomplish her wish, Applicant borrowed money to repatriate his father-in-law's remains and pay his burial expenses. With the increased debt, Applicant began to have difficulty paying his bills and fell behind on his mortgage. He lost his home to foreclosure in 2009, leaving a \$93,700 deficiency balance on his mortgage loan (SOR ¶ 1.a). In 2012, Applicant and his wife filed for Chapter 7 bankruptcy protection. For unexplained reasons, their bankruptcy petition was converted to a Chapter 13, with a \$1,200 monthly payment for 60 months. Applicant and his wife abandoned the petition and it was dismissed (SOR ¶ 1.i).⁴

In his answer to the SOR, Applicant explains that the debts alleged in SOR ¶¶ SOR ¶¶ 1.b-1.c, and 1.k – 1.l, totaling \$26,000 are related to the burial expenses for his

² GE 3.

³ GE 3-5.

⁴ GE 2.

father-in-law. He also admits responsibility for the debts alleged in SOR ¶¶ 1.l, 1.h, and 1.r, totaling \$5,000. Applicant blames his wife for opening the accounts alleged in SOR ¶¶ 1.d, 1.g, 1.j, 1.m, 1.n, 1.p, 1.q, totaling \$5,000. He claims she abandoned responsibility for the accounts after their separation in 2012. However, the credit reports in the record show all of the accounts alleged in the SOR, with the exception of SOR ¶ 1.q, are individual accounts in Applicant's name. He disputes the accounts alleged in SOR ¶¶ 1.f and 1.o. All of the alleged accounts remain unresolved.⁵

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).

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

⁵ GE 2, 4-5.

questions about an individual's reliability, trustworthiness and ability to protect classified information."⁶

The SOR alleges that Applicant owes approximately \$130,000 on 17 delinquent accounts. Applicant admits that he began having difficulty paying his debts in 2008, which resulted in the loss of his home, the accumulation of delinquent debt, and an abandoned bankruptcy petition. The record supports a *prima facie* case that Applicant has a history of not meeting his financial obligations and that he has demonstrated an inability to do so.⁷ While Applicant offered explanations for his delinquent accounts, he did not provide any evidence regarding their resolution, all of which remain unresolved. Furthermore, Applicant failed to demonstrate that his financial problems occurred under circumstances beyond his control. Accordingly, the security concerns raised by Applicant's finances remain, and none of the financial considerations mitigating conditions apply.

After reviewing the record, I conclude that doubts remain about Applicant's security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. Ultimately, Applicant failed to meet his burdens of production and persuasion. Because the security concerns raised in the SOR remain, following *Egan*⁸ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.r:	Against Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge

⁶ AG ¶ 18.

⁷ AG ¶¶ 19(a) and (c).

⁸ *Navy v. Egan*, 484 U.S. 518 (1988).