



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



In the matter of:)	
)	
-----)	ISCR Case No. 17-01536
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
 For Applicant: *Pro se*
 03/27/2019

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He presented sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his delinquent state taxes, his failure to timely file state and federal tax returns, and his delinquent debts. Accordingly, this case is decided for Applicant.

Statement of the Case

On September 27, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline. Applicant answered the SOR on December 15, 2017, and requested a hearing to establish his eligibility for continued access to classified information.¹

¹ This action was taken under Executive Order (E.O.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (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 June 8, 2017, apply here.

Upon due notice to Applicant, on August 2, 2018, a hearing was convened. The transcript (Tr. No. 1) of that initial hearing was received on August 10, 2018. Applicant appeared and explained that he had just recently completed some domestic relations hearings and had used his financial resources and time taking care of that matter. Applicant also indicated that he was considering retaining counsel or at least consulting with counsel for this hearing. Without objection, I granted a continuance of about six weeks.²

Upon due notice to Applicant, the hearing was reconvened on September 12, 2018. Applicant testified, and the exhibits offered by the Government were admitted into the record without objection. (Government Exhibits (GE) 1 – 6 and Hearing Exhibits (HE) I and II were admitted without objection.) Applicant offered five exhibits, Applicant's Exhibits (AE) A through E, which were admitted without objection. At the request of Applicant, without objection, the record remained open until September 26, 2018. Applicant timely submitted four documents, which I marked as AE F through AE I and were admitted without objection. The transcript (Tr.) of the reconvened hearing was received on September, 20, 2018.

Findings of Fact

Applicant is 44 years old, a college graduate with some post-graduate work, and has been divorced since 2014. He has two sons, ages 10 and 12, and has had full custody of them since April 2016. When he completed the security clearance application in June 2016, Applicant had been employed by a defense contractor since May 2016.³

In August 2011, Applicant's then spouse decided that she wanted to be separated. Instead leaving Applicant, his spouse ousted Applicant from the family home. She also tried (unsuccessfully) to get a restraining order against Applicant and to have him institutionalized. The spouse kept Applicant from seeing his two sons, other than expecting him to take them to school each morning. She filed for divorce in late 2011. The divorce was final in March 2014.⁴ What followed the separation was a bitter custody battle that was only settled just months before this security clearance hearing. Applicant was given full legal custody of his boys.⁵

Not long after being ousted from the family home, in 2012 Applicant became unemployed when the contract he was servicing for a municipal client ended. Applicant was homeless and lived for seven or eight months in his truck. On some occasions, he

² Tr. No. 1 5-11.

³ GE 1.

⁴ Tr. 25-26, 47-48; GE 1.

⁵ Tr. 28-30, 54-55. Applicant estimated that since the separation in 2011, he has attended about 40 court hearings to get custody of his sons. Tr. 28.

would stay with his grandmother in the senior citizens home where she lived. Although he was not supposed to spend the nights, he often did so anyway.⁶

In early 2013, Applicant, his mother, and his grandmother moved to a rental house. That lodging was barely adequate and ultimately developed utility problems.⁷ Since Applicant remained unemployed, he could take his mother to her dialysis three days a week and help care for his paralyzed grandmother, as well. They lived there in 2013 and 2014. Applicant's mother died in January 2015, and his grandmother died six months later.⁸

After his grandmother died, Applicant moved to an efficiency apartment at a nearby college where he was doing part-time work. The college allowed him to live there rent-free. He lived there until August 2015, when he moved to a college-owned two bedroom apartment, again rent-free. Applicant is still living there.⁹

Applicant has had numerous periods of unemployment that have impaired his ability to recover fully from his financial difficulties. His periods of unemployment were as follows: November 2017 to June 2018; October 2015 to April or May 2016; August 2014 to December 2014; March 2014 to June 2014; May 2013 to January 2014. None of those periods of unemployment appear to have been foreseen by Applicant.¹⁰ He has been fully employed since June of 2018.¹¹

The SOR alleges that Applicant has six delinquent debts totaling \$28,598, and that he failed to file timely his state and federal income tax returns for 2012 through 2015.¹² Applicant admitted that he failed to timely file his state and federal income tax returns for 2012 and 2015 but that they have now been filed through tax year 2016. He also admitted that he is indebted to the state for income taxes in the amount of \$3,140 (SOR ¶1.c) but that he is on a payment plan that is current.¹³

Applicant testified at length about why he failed to timely file his income tax returns. When his spouse ousted him from the family home in 2011, he had no access to the

⁶ GE 1; Tr. 49-51, 63. Even until as late as 2013 or 2014 Applicant occasionally spent nights in his truck. Tr. 70.

⁷ Answer, pp. 2-3.

⁸ Tr. 26-27, 51-52, 65, 96.

⁹ Tr. 52-54.

¹⁰ GE 1; GE 2, PSI pp. 5-6; GE 3, PSI pp. 5-6; Tr. 59, 66, 109.

¹¹ Tr. 109.

¹² SOR ¶1.

¹³ Answer, pp. 2-3. Applicant's post-hearing exhibits support his contention. AE H; AE I.

paperwork needed to file tax returns. Applicant was still living on and off in his truck and often had no access to electricity. He went to a tax preparation service, but it wanted \$400 to \$500 up front, and he did not have kind of money. It was not until 2017 that Applicant had sufficient information to file tax returns. Until then, all of his paperwork was “scattered. . . all over the place, or thrown away.”¹⁴

Applicant testified about his current plan to pay delinquent debts now that he is fully employed again. He is working with a credit repair company. Applicant has three accounts in which he deposits his pay. In one account, he deposits about one-third of his pay. That one-third is used for his everyday bills. The remaining two-thirds goes into two other accounts. One is a savings account for emergencies, and the other is used to pay his back bills. He received legal advice on how to structure these accounts.¹⁵

Applicant denied SOR ¶1.d (a charge-off for \$21,149 for a repossessed auto), because he has disputed the amount due.¹⁶ He provided documentation of that dispute.¹⁷

Applicant denied SOR ¶1.e (child support of \$2,377), because he currently has legal custody of his sons and owes no back child support. He provided documentation for that contention.¹⁸

Applicant admitted SOR ¶1.f (a collection account for \$1,192) but submitted documents showing his adherence to a payment plan.¹⁹

Applicant admitted SOR ¶1.g (a collection account for \$440). He answered that he received credit counseling and came up with an installment plan for this debt. Applicant documented his counseling but did not provide any evidence of a payment plan or his adherence to a plan.²⁰

Applicant denied SOR ¶1.h (a collection account for \$300). He answered that he contacted the collection agency and the original creditor and was told that they have no

¹⁴ Tr. 69-71, 81-83. The Government established that Applicant did not file late tax returns until after he received interrogatories. Tr. 81-82.

¹⁵ Tr. 30-33. AE A. The plan was working until he was let go from his job in November 2017, having worked for that employer since June or July 2017. Tr. 33-34.

¹⁶ Answer, p. 4.

¹⁷ AE F.

¹⁸ Answer, p. 5 and Answer Exhibit C.

¹⁹ Answer, p. 5 and Answer Exhibit D; AE G.

²⁰ Answer, p. 6 and Answer Exhibit B.

delinquency in his name. They would not, however, provide him any document stating that.²¹

Law and Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” SEAD-4, Appendix A, ¶ 2(b). See also SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

²¹ Answer, pp. 6-7. That debt does not appear on the most recent credit reports (GE 4; GE 5). It was last reported on August 20, 2016. GE 6.

Discussion

Guideline F, Financial Considerations

The SOR alleges that Applicant has had financial problems, which purportedly raise a security concern under Guideline F. The financial considerations security concern is explained at AG ¶ 18, which in pertinent part, states:

Failure to live within one's means, satisfy debts, and 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence.

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt and other security-significant financial issues cast doubt upon a person's self-control, judgment, and other qualities essential to protecting classified information.²²

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(f): failure to file . . . annual Federal [or] state . . . income tax returns or failure to pay annual . . . state . . . income tax as required;

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

²² ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

A security clearance adjudication is not a debt-collection process. Rather, my obligation is to examine the way an applicant handles personal financial obligations to assess how he may handle his security obligations.²³ Here, Applicant's security clearance eligibility was called into question by his failure to timely file his state and Federal income tax returns, pay his state income tax obligation, and by his level of delinquent consumer debt. I conclude that disqualifying conditions AG ¶¶ 19(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

The record is clear that Applicant's financial problems were caused by a parade of horrible conditions, any one or more of which would severely test the financial stability of any individual. There is no need for a detailed recap of what is made clear in the findings of fact. In sum, Applicant's Answer to the SOR and his testimony showed that his financial problems were largely caused by: (1) an acrimonious divorce and custody dispute; (2) serious illnesses suffered by Applicant's mother (on dialysis three days a week) and his grandmother (paralysis); (3) several periods of unemployment caused by conditions beyond his control, and in part by the need for Applicant to care for his mother and grandmother; (4) Applicant being ousted from his home by his then spouse in late 2011; (5) using what time and resources Applicant had on the custody battle for his two sons; (6) Applicant being homeless periodically. I find that the allegations in the SOR are mitigated by AG ¶¶ 20(a) through (e), and (g).

The record does not raise doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.²⁴ Accordingly, I conclude that Applicant met his ultimate burden of persuasion

²³ See *generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

²⁴ AG ¶ 2(a)(1)-(9).

to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

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 (Financial Considerations): For Applicant

Subparagraphs 1.a – 1.h: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge