



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



In the matter of:)	
)	
-----)	ISCR Case No. 18-02131
)	
Applicant for Security Clearance)	

Appearances

For Government: Dan O'Reilley, Esq., Department Counsel
 For Applicant: *Pro se*
 02/06/2020

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He presented insufficient evidence to explain, extenuate, and mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

On September 4, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under Guideline F, financial considerations. This action was taken under Executive Order (E.O.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended, as well as DOD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive). The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), effective within the DOD on June 8, 2017, apply here. Applicant answered the SOR on October 17, 2018, and requested a hearing to establish his eligibility for access to classified information.

I was assigned the case on February 2, 2019. On May 22, 2019, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing. The Government offered three exhibits, which were marked for identification as GE 1 through 3, and which were admitted without objection. Applicant offered no exhibits. The transcript of the hearing (Tr.) was received on June 5, 2019.

Findings of Fact

Applicant is 36 years old, a high school graduate who has some college credits and is pursuing a college degree predicted in 2022. He has never been married and has no children. Since February 2011, Applicant has been employed by defense contractors. He has had a secret clearance since 2005. From December 2010 until February 2011, Applicant was unemployed. (GE 1.)

The SOR alleged that Applicant has 10 delinquent accounts totaling \$38,518. (SOR ¶ 1.) The Government moved to amend the SOR to withdraw SOR ¶ 1.i as being a duplicate of SOR ¶ 1.h. I granted the motion without objection. (Tr. 11-12.) Applicant admitted all of the alleged accounts. (Answer.)

Applicant testified about the status of the delinquent SOR debts. Those debts became delinquent in 2015 or 2016, because Applicant stopped payments on them or was inconsistent in making payments when they came due. Applicant has not contacted those creditors to set up payment plans. He plans, however, to pay those creditors in the future. Applicant spoke with a credit repair agency in about September 2018, but he has not followed up on that approach. Finally, Applicant has had no financial counseling but hoped to enroll in one in the month or so after the hearing. (Tr. 27-35, 37-38, 43-44, 52-54; GE 2; GE 3.)

Applicant testified about the circumstances that caused his financial problems. He pointed to a decline of overtime opportunities with his current employer. As the unpaid bills began to mount, Applicant became overwhelmed. Applicant also pointed to “bad investments,” notably a car he purchased new in 2014 that cost \$30,000. Applicant also admitted to having been financially irresponsible. Any financial assistance he provided to his mother did not cause his financial problems. (Tr. 24-25, 31-32, 51-52, 54.)

Applicant makes between \$60,000 and \$65,000 per year depending on the availability of overtime. Applicant’s rent is \$1,305 per month. He currently drives a 2009 car he purchased used and pays \$385 per month for it. Applicant has no savings account. He has a 401(k) account with a balance of about \$10,000. Applicant tried to withdraw funds from that account to pay some of his debts but was told he could not do so, because he needed a recognized hardship to withdraw funds. He is current on his state and federal income taxes. Applicant teaches music daily in elementary, middle, and high schools, but is not paid. Applicant’s daily routine begins at about 2:30 a.m. to get to his full-time job by 4:00 a.m. After work, he then attends his college courses. Applicant then goes to his teaching job. (Tr. 19, 22, 30, 45, 48-53.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). 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 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, these guidelines are applied 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(a), 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 national security eligibility will be resolved in favor of the 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Analysis

Guideline F, Financial Considerations

The financial considerations security concern is set out in AG ¶ 18:

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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following conditions are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶¶ 19(a) and (c) apply to Applicant's delinquent debts. The next question is whether any mitigating conditions apply.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

Although the SOR debts might have been incurred several years ago, they currently remain delinquent. Nor are the delinquent debts infrequent; there are numerous such debts. Thus, AG ¶ 20(a) does not apply.

Applicant explained candidly that his financial problems were due to certain bad investments and his own irresponsibility, both largely within his control. On this record, AG ¶ 20(b) does not apply.

Applicant has not made any payments on any of the SOR debts. Nor has he set up any payment plans for any of those debts. Applicant has not submitted any documents showing the existence of such a plan, nor any documents showing a track record of adhering to any plan. A promise or a stated intent to pay debts is not a substitute for a track record of debt payment. See, e.g., ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). AG ¶ 20(d) does not apply.

The record raises concerns 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. (AG ¶ 2(d)(1)-(9).)

Accordingly, I conclude that Applicant did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him 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, is:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-h:	Against Applicant
Subparagraph 1.i:	Withdrawn
Subparagraph 1.j:	Against

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge