



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-07820
)	
Applicant for Security Clearance)	

Appearances

For Government: Phillip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

10/27/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant established his eligibility for access to classified information, which was called into question by his past financial lapses. In the past two years, he has addressed and resolved the delinquent debts he accumulated after graduating from college. He now manages his finances in a responsible fashion and mitigated the security concerns raised by his past financial mistakes. Clearance is granted.

Statement of the Case

On June 2, 2014, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). Applicant timely answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

On July 16, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed with a hearing in this case. On August 4, 2014, a notice of hearing (NOH) was issued setting the hearing for September 23, 2014. The hearing was held as scheduled. Department Counsel offered exhibits (Gx.) 1 – 5, which were admitted into evidence without objection. Applicant testified and offered exhibit

(Ax.) A and its six attachments (Atch.). Applicant submitted Ax. B post hearing. Ax. A and B, as well as Atch. 1 – 6, were admitted without objection. The hearing transcript (Tr.) was received on October 1, 2014, and the record closed on October 6, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:¹

Applicant is in his early thirties. He is single, never married, and has no children. In 2004, he was the first of his family to graduate from college. He financed his college education using student loans and acquired a significant amount of student loan debt. His student loan debts totaled over \$80,000. His financial trouble started shortly after graduation, when he moved out on his own and failed to properly manage his finances. He defaulted on his student loans and accumulated other delinquent debt. Over the past two years, he has taken a number of steps to address and resolve his past-due debts.

Applicant's primary focus over the past two years has been on resolving his student loan debts. He submitted documentation of rehabilitating and satisfying over \$14,000 in private student loans. (Ax. A, Atch. 2) He also provided documentation that reflects he consolidated over \$63,000 in federal student loans and is paying over \$500 per month as required by terms of the repayment agreement. He voluntarily set up an automatic draft from his bank account to pay the agreed upon monthly payment and has already paid over \$4,500 towards the satisfaction of the federal student loan debt. (Ax. A, Atch. 3 – 4) Applicant also provided documentation and court records showing that he successfully disputed the \$5,500 education-related debt listed in SOR 1.f. (Ax. A, Atch. 5; Ax. B) Applicant has responsibly addressed and provided documentation that he has resolved his student loan and education-related debts.

Applicant also addressed and resolved the other delinquent debts listed in the SOR by either paying the debts or successfully disputing them. He submitted documentation of satisfying the debts listed at SOR 1.c and 1.d. He disputed the remaining SOR debts and submitted a recent comprehensive three-in-one credit report that no longer reflects these debts. (Tr. at 48-49; Gx. 4; Ax. A, Atch. 1, 6)

Applicant works for a federal contractor providing support to the U.S. Government in its continuing mission and efforts in Afghanistan. As part of his duties, Applicant has deployed to Afghanistan on a number of occasions and has come under hostile fire. (Tr. at 27-28, 42-44) He disclosed his financial problems on his security clearance application and fully cooperated with the Government during the ensuing background investigation. (Gx. 1 – 2) He currently earns about \$120,000 annually, which has allowed him to pay his past-due debts and stay current on his monthly, recurring financial obligations. He has not incurred any other delinquent debt. He has over \$10,000 in a savings account. He owns a car that he purchased after graduating

¹ In reaching the above findings of fact, I have made only those reasonable inferences supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

from college and testified that he plans on “driving [the car] until the wheels fall off of it.” (Tr. at 36)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). 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.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.² However, as there is no *per se* rule requiring disqualification, a judge must decide each case based on its own merits.³

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.⁴

² See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

³ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

⁴ Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). An administrative judge is required to examine an individual’s past history and current circumstances to make a predictive

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.⁵

Analysis

Guideline F, Financial Considerations

The potential security concern regarding an applicant with financial problems is explained at AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s history of failing to pay his debts, to include defaulting on his student loans, raise the Guideline F concern and establish the following disqualifying conditions:

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

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

The guideline also lists a number of conditions that could mitigate the concern. The mitigating conditions that are potentially relevant in this case are:

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(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

judgment about an individual’s ability and willingness to protect and safeguard classified information. ISCR Case No. 11-12202; ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

⁵ ISCR Case No. 12-04554 at 4 (App. Bd. July 25, 2014) (“an adverse decision under the Directive is not a determination that the applicant is disloyal. Rather, such a decision signifies that the applicant has engaged in conduct or has otherwise experienced circumstances that raise questions about his or her judgment and reliability.”).

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's accumulation of a significant amount of delinquent debt raises a serious security concern. However, the vast majority of Applicant's delinquent debt load was attained in pursuit of his undergraduate degree, not a result of reckless or frivolous spending or related to other matters raising a security concern. Furthermore, over the past two years, Applicant has taken a number of steps to responsibly address and resolve his past-due debts.⁶ Of note, Applicant resolved the student loan debts he acquired for his undergraduate degree. He satisfied over \$14,000 in private student loans. He entered into and is paying per the terms of a repayment agreement to satisfy an additional \$63,000 in student loans. He submitted documentation of successfully disputing through the courts an education-related debt of over \$5,500 and submitted documentation of paying other debts listed in the SOR.⁷ He now lives within his means and has a firm control over his finances. In short, Applicant submitted credible and substantial evidence of true financial reform.⁸ Accordingly, Applicant's past financial mistakes no longer raise a concern about his current judgment, reliability, and trustworthiness. AG ¶¶ 20(a) and 20(c) through 20(e) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁹ Applicant has been completely upfront and honest about his financial problems since the start of the security clearance process. He has been employed as a federal contractor supporting the U.S. mission in Afghanistan for

⁶ ISCR Case No. 14-00151 at 3 (App. Bd. Sep. 12, 2014) ("In evaluating a case under Guideline F, a Judge may consider not only the extent of an applicant's debts but also the circumstances under which they were incurred and the applicant's response to them.").

⁷ Generally, the lack of reference to an SOR debt in a new credit report does not necessarily establish that the debt has been resolved. However, the weight of the evidence supports a finding that the remaining SOR debts have been resolved. Moreover, even if some of these debts remain, Applicant's demonstrated track record of responsibly addressing over \$100,000 in SOR debts mitigates the security concerns raised by these remaining debts, which together total less than \$15,000.

⁸ ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (grant affirmed upon proof of clear evidence of financial reform).

⁹ The non-exhaustive list of adjudicative factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

the past four years and, through this employment, has proven his reliability and exhibited other favorable character traits required of those granted access to this nation's secrets. This favorable record evidence, when coupled with Applicant's responsible action in addressing his delinquent debts, mitigates the security concern at issue. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.l: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge