



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-03001
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

08/10/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns raised by his financial situation and negligence in supervising a coworker that resulted in a security violation. He resolved or is in the process of resolving the debts he acquired following a contentious divorce. He manages his finances in a responsible manner. His role in the security incident was a result of a combination of matters beyond his control and his failure to properly supervise a coworker, who inadvertently released classified equipment. No compromise of classified information resulted from the incident. Applicant established, through his words and actions, that he understands his security obligations and will discharge all his responsibilities in a manner expected of those granted access to classified information. Clearance is granted.

Statement of the Case

On November 21, 2014, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that his conduct and circumstances raised security concerns under the financial considerations guideline.¹ On December 19, 2014,

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security*

Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information.

On February 10, 2015, Department Counsel amended the SOR to add security concerns under the guidelines for handling protected information and personal conduct. On March 4, 2015, Applicant answered the amendment. For ease of reference, the original SOR and the amendment will be referred to as the SOR.

On February 28, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for May 14, 2015. The hearing was convened as scheduled.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 – 6. Applicant testified, called several witnesses, and offered Applicant's Exhibits (Ax.) A – N. He requested additional time post-hearing to submit further documentary evidence. I granted his request, and he timely submitted Ax. O – Q. All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on May 22, 2015, and the record closed on May 28, 2015.

Findings of Fact

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

Applicant is married with three minor children. He is a high school graduate with some college. He has held a security clearance since 2008, when he began working for his current employer.²

Applicant went through a period of financial trouble related to his first marriage and contentious divorce proceedings. He accepted responsibility for the marital debts, to include the mortgages on the marital residence, as part of the divorce. He did so in order to secure full custody of his only child from the marriage. He subsequently learned that his former spouse had hid from him and failed to pay a number of other debts, which he ended up having to pay.

Applicant has resolved most the marital debt that he accepted as part of the divorce. He paid the smallest debts first and then progressively worked his way up to the largest debts. He paid 15-20 debts in this fashion. He provided documentation showing that he has resolved the non-mortgage related debts from his first marriage, except for the \$9,500 debt listed at SOR 1.a. He voluntarily entered into a repayment agreement with the creditor. He has \$300 automatically deducted from his checking account each month to resolve this debt.³

Clearance Review Program (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by DOD on September 1, 2006.

² Tr. at 31-32, 45-46; Gx. 1; Ax. B; Ax. N.

³ Tr. at 35-38, 50-52, 72; Ax. C, Ax. K – M; Ax. O.

Following the divorce in 2006, Applicant was unable to pay the mortgage for his former home. He could not sell it because of the collapse of the local housing market. The home was foreclosed, resolving the debt associated with the primary mortgage and purportedly leaving a deficiency balance owed to the second mortgage lienholder, which is listed at SOR 1.f. Applicant received a portion of a settlement from a class-action lawsuit against his former mortgage lenders. He used the money to satisfy some of the debts from his first marriage. He has not received collection notices regarding the debt allegedly owed for the second mortgage. His current credit report does not reflect a debt for the second mortgage. As of the close of the record, Applicant was attempting to determine whether the debt had been canceled or otherwise not collectible because of the underlying misconduct engaged in by the mortgage lenders or for other reason. If the debt is still valid, Applicant credibly testified that he will resolve it.⁴

Applicant has received financial counseling. He has not incurred other delinquent debt since his divorce. He currently manages his finances, with the assistance of his wife, in a responsible manner. He has received no financial support from his former spouse for their child.⁵

In the summer of 2014, Applicant and a coworker were given a short-notice assignment to “clear a room” that contained both classified and unclassified computer equipment. Applicant had completed this type of work in the past, but some of the equipment in the room was far older than any he had work with before. Also, the amount of work was far greater than anticipated because the room had essentially become a location where old and obsolete computer equipment was stored.

Applicant was given a baseline inventory by his coworker, who was supposedly familiar with the equipment in the room. Applicant was to supervise his coworker as they completed the assignment. Unbeknownst to Applicant, the inventory he was given was not the original one his coworker had received from their employer. Instead, Applicant’s coworker had created a color-coded inventory that would assist them in completing the assignment by the deadline. At some point, Applicant realized that some of the classified equipment in the room was not on the inventory list and vice versa. Applicant and his coworker completed the assignment to the best of their ability, but a piece of equipment containing classified servers left the facility before it was properly cleared.⁶

A subsequent Government investigation uncovered that Applicant’s co-worker had created the unofficial inventory list and was “very busy” doing his routine office work in addition to the time-sensitive assignment. Applicant’s coworker admitted that he may have “overlooked” clearing the specific classified equipment, and that he was the one who told the outside contractors to remove it from the secure facility. The outside contractor discovered the classified equipment, sealed it, and immediately alerted security for Applicant’s employer, who took possession of the equipment and alerted the

⁴ Tr. at 47-50, 66-74; Ax. P.

⁵ Tr. at 34-35, 52-55; Ax. D, Ax. Q.

⁶ Tr. at 38-43, 63-66, 68-69, 74-80. *See also*, Tr. at 22 (expert describes process of clearing a room).

Government. The Government investigation found that Applicant and the co-worker jointly failed to “exercise due diligence.” The investigation determined that “compromise of classified information can reasonably be ruled out.”⁷

Applicant received retraining on the proper handling and safeguarding of classified material. He takes full responsibility for his role in the security violation. On his own initiative, Applicant has undertaken a process to streamline his employer’s inventory process to prevent a similar incident from recurring.⁸

Applicant’s performance evaluations, both before and after the security incident, reflect that he generally meets or exceeds expectations. His character references, some of whom have held security clearances for decades and work in the information security field, speak favorably as to Applicant’s professionalism, judgment, reliability, and trustworthiness.⁹ The Defense Security Service (DSS) recently conducted a vulnerability assessment regarding the information technology systems that Applicant, as part of a team, is responsible for handling and maintaining. DSS gave these systems the highest security rating possible of “superior.”¹⁰ An assistant facility security officer for Applicant’s employer writes that Applicant’s recent “quick action possibly saved the transfer of classified information” to unclassified systems.¹¹

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 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.

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.

⁷ Gx. 6.

⁸ Tr. at 38-43, 74-80.

⁹ Tr. at 16-29; Ax. H; Ax. I; Ax. J.

¹⁰ Ax. I.

¹¹ Ax. J.

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, recognizing the paramount importance of protecting national security in all suitability determinations, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.¹²

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.

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.

Analysis

Guideline F, Financial Considerations

The potential security concern under this guideline 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 past financial trouble raises the financial considerations concern. The record evidence also raises the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts;" and 19(c), "a history of not meeting financial obligations."

The following mitigating conditions were potentially raised by the evidence:

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

¹² 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.").

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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; and

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

Applicant's past financial problems were related to his troubled first marriage and subsequent contentious divorce. Notwithstanding his dire financial situation, Applicant did not ignore his financial obligations. Instead, after regaining his financial footing, Applicant contacted his creditors and resolved or is in the process of resolving his past-due debts. His demonstrated track record of debt repayment and sound financial management provides sufficient assurance that he will resolve his remaining debts and continue to manage his finances in a manner expected of those granted access to classified information. AG ¶¶ 20(a) through 20(d) apply.

Guideline K, Handling Protected Information

The security concern when an individual mishandles classified information is explained at AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Security clearance cases require administrative judges to make reasonable assessments as to whether an individual possess the requisite good judgment, reliability, and trustworthiness to be entrusted with the handling of classified information. Such predictive judgments are based on an examination of an individual's conduct and circumstances that are generally not related to the past handling of classified information. However, when credible evidence exists that an individual previously mishandled classified information such an individual bears a very heavy burden in demonstrating that they should once again be entrusted with this nation's secrets.¹³

¹³ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014) (very heavy burden standard reserved for Guideline K cases). *See also*, ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) (security clearance determinations are "not an exact science, but rather predicative judgments.)".

Applicant's role in the security incident raises the serious security concern addressed at AG ¶ 33. The record evidence also raises the disqualifying condition at AG ¶ 34(g), "any failure to comply with rules for the protection of classified or other sensitive information."

The record evidence also raised the applicability of the following mitigating conditions:

AG ¶35(a): so much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶35(b): the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities

Applicant's role in the incident, which occurred a little over a year ago, is not a long time ago. However, no bright line rule exists as to the length of time that must pass before a past security incident no longer raises a concern about an individual's current suitability. Instead, the true focus of the inquiry is whether the individual has: (1) accepted responsibility for the incident, (2) reformed the behavior that led to or contributed to the incident, and (3) established that a similar incident is unlikely to recur. A judge must review any claim of reform and rehabilitation with "strict scrutiny."¹⁴ Applicant met this burden.

Applicant failed to properly supervise his coworker and stop the sensitive work they were engaged in when it became apparent that the inventory provided to him by his coworker was incomplete. Instead of calling a halt to the time-sensitive assignment and seeking further guidance, Applicant attempted to accomplish the task to the best of his ability. Under the stress of time, as well as the quantity and quality of the work involved, Applicant was negligent in executing his security responsibilities. He missed a piece of classified equipment that was improperly cleared, likely by his coworker, for disposal by an outside contractor hired by his employer.¹⁵ However, Applicant does not blame his coworker or other matters for his personal lapse in judgment. Instead, he takes full responsibility for his conduct and role in the violation. He has received retraining and, more importantly, initiated significant changes that will prevent a similar incident from occurring in the future. He submitted documentation attesting to his proper handling and safeguarding of classified information, notably, his quick thinking and action prevented the spillage of classified information. His contributions led to the shoring up of potential vulnerabilities in his employer's information security systems,

¹⁴ ISCR Case No. 06-21537 at 4 (App. Bd. Feb. 21, 2008).

¹⁵ *Contrast with*, ISCR Case No. 07-08119 at 5 (App. Bd. July 8, 2010) ("ongoing pattern of knowing and willful security violations").

resulting in a superior rating from DSS. Furthermore, the incident did not result in the actual compromise of classified information.¹⁶

Moreover, I had an opportunity to observe Applicant's demeanor when he testified and found him credible. He takes full responsibility and is remorseful for his role in the violation, he takes his security obligations seriously, and he demonstrated that he has reformed the behavior and made significant efforts to change the circumstances which contributed to the incident. Based upon these changes, it is unlikely that Applicant will be involved in a similar incident in the future. Applicant's past role in the security incident no longer raises a concern about his reliability, trustworthiness, and judgment.¹⁷

Guideline E, Personal Conduct

The personal conduct security concern is explained at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's role in the security incident also raises security concerns under the personal conduct guideline. Specifically, the disqualifying condition at AG ¶ 16(c) applies.¹⁸ For similar reasons noted above, Applicant mitigated the concern by establishing the mitigation conditions at AG ¶¶ 17(c)¹⁹ and 17(d).²⁰

¹⁶ *Contrast with*, ISCR Case No. 06-21537 (favorable decision undermined by Government agency determination that actual compromise occurred and individual's failure to take responsibility for their role in the security violation).

¹⁷ *Compare with*, ISCR Case No. 04-05802 (App. Bd. Jun. 13, 2007) (notwithstanding the occurrence of several security violations, favorable decision affirmed based on similar factors contributing to the security incident and similar evidence of reform and rehabilitation that exist in the present case).

¹⁸ "Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not safeguard protected information."

¹⁹ ". . . so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment."

²⁰ "The individual has acknowledged the behavior and . . . taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur."

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).²¹

Applicant allowed his workload and perceived time pressure to complete the assignment to obscure his better judgment, resulting in an inadvertent security violation. Applicant, consistent with the manner in which he resolved the debts he incurred following his divorce, took responsibility for his circumstances and reformed his behavior. Additionally, Applicant's past financial trouble was a consequence of his decision to place his child's well-being over his own interest. Such decision, in conjunction with the other favorable record evidence, reflects favorably as to Applicant's ability to place his security obligations over his own interest and to responsibly manage his obligations in a manner expected of those granted a security clearance.²²

Accordingly, I find that Applicant met his burden in mitigating the security concerns at issue. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for access to classified information.

Formal Findings

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a – 1.g:	For Applicant
Paragraph 2, Guideline K (Handling Protected Information):	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 3.a:	For Applicant

²¹ 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.

²² *Contrast with*, ISCR Case No. 12-04813 at 5 (App. Bd. July 31, 2015) (favorable decision undermined by evidence of individual's willingness "to put his own interests ahead of the need of his employer, and the DOD.").

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