



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-03810
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

07/07/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial circumstances. Clearance is denied.

Statement of the Case

On January 8, 2015, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.¹ On May 21, 2015, Applicant answered the SOR (Answer) and requested a determination on the administrative (written) record. He admitted most of the past-due debts listed on the SOR, and stated that he was in the process of cleaning up his credit. He asked for more time to execute his plan to resolve his past-due accounts.²

¹ The CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The CAF adjudicated this case using the previous version of the adjudicative guidelines, which were applicable for all cases falling under the jurisdiction of the Directive between September 1, 2006 and June 7, 2017.

² Subsequently, Applicant claimed to have paid four past-due accounts and supplied updated credit reports. It is unclear whether the paid debts correspond to any of the SOR allegations.

On May 10, 2016, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant six exhibits (Items 1 – 6) that the Government offers for admission into the record.

On July 5, 2016, Applicant submitted a response to the FORM (Response). The Response consists of Applicant's handwritten notations on a copy of the SOR and three documents (Exhibits A – C), which he offers for admission into the record. In the Response, Applicant again, as he did in his Answer, admits most of the SOR debts and promises to address and resolve them.³

On June 1, 2017, I was assigned Applicant's case. After confirming Applicant's continued sponsorship for a security clearance, I reopened the record to provide him an opportunity to provide updated information, including proof of the steps he had taken to address the SOR debts and the status of his current financial situation.⁴ Applicant did not submit any additional matters and the record closed on June 27, 2017.

Procedural Issue

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position."⁵ The National Security Adjudicative Guidelines (hereinafter "adjudicative guidelines" or "AG"), which are found in Appendix A to SEAD-4, are to be used in all security clearance decisions issued on or after June 8, 2017.⁶ Accordingly, I have applied the current version of the adjudicative guidelines.⁷ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

³ Specifically, Applicant admitted the 16 debts referenced in SOR 1.a – 1.c, 1.e – 1.h, 1.j, 1.m – 1.r, 1.t and 1.u. He stated that he would resolve the majority of these debts in early July 2016, and would follow-up with proof of payment by email. No such proof of payment was submitted. These unresolved debts total over \$30,000. In his Answer and Response, Applicant denied the two debts listed in 1.d and 1.i, totaling nearly \$20,000. He did not submit documentation to support the basis of his dispute of these two debts. However, he did provide proof showing that he satisfied the \$2,000 debt referenced in SOR 1.s (Exhibit B). He also submitted documentation showing that he resolved a federal debt through wage garnishment (Exhibits A and C; Answer, 11/2/2015 Credit Report at 2). Thus, Applicant addressed and resolved the debts referenced in SOR 1.k, 1.l and 1.s, which total about \$2,500.

⁴ Confirmation of Applicant's continuing sponsorship for a security clearance and the email sent to the parties reopening the record were marked as Appellate Exhibits I and II, respectively.

⁵ SEAD-4, ¶ B, *Purpose*.

⁶ SEAD-4, ¶ C, *Applicability*.

⁷ Nonetheless, I have considered the previous version of the adjudicative guidelines and my ultimate decision in this case would have been the same.

Findings of Fact

Applicant, 53, is currently working overseas as a contractor supporting the U.S. Government. He served in the U.S. military from 1988 to 2011. He was unemployed for three months after retiring from the military and before being hired by his current employer in July 2011. He was enrolled in an online college from approximately January to July 2011, but did not earn a degree.

Applicant was initially granted a security clearance in approximately 1988, while serving in the U.S. military. He submitted a security clearance application in connection with his current job as a federal contractor in February 2013. In response to questions about his financial record, Applicant asserted that he had no delinquent accounts or other negative financial information to report. He certified the accuracy and truthfulness of his responses. A few days later, background investigators accessed Applicant's credit report. The credit report reveals that Applicant had numerous accounts that were in collection, charged off, or seriously past due.⁸

In March 2014, a security clearance investigator asked Applicant if he had any delinquent debts or accounts in collection status. He denied having any such debts. The investigator then confronted Applicant with the negative information from his March 2013 and March 2014 credit reports. These credit reports reflect numerous debts that were in collection, charged off, or seriously past due. Applicant denied any knowledge of these delinquent accounts, but promised to look into them and address them.⁹

Many of the negative accounts Applicant discussed with the investigator over three years ago are listed on the SOR. As of the close of the record, sixteen SOR debts totaling about \$30,000 remain unresolved. Two additional SOR debts, totaling about \$20,000, also remain unresolved. Applicant disputes these two debts, but provided no documentation to substantiate the basis of his dispute. He has (apparently) taken no action to address these debts beyond filing a dispute with the credit agencies following the issuance of the SOR.¹⁰

Applicant also told the investigator during his March 2014 clearance interview that his net monthly income was approximately \$10,600. He claimed monthly expenses totaling less than \$6,000, which left him with over \$4,000 in monthly discretionary income.¹¹ Applicant states in his Answer that his financial problems were attributable to

⁸ Items 2, 3.

⁹ Items 1, 3, 4, 6. Applicant's apparent lack of candor about his finances was not alleged in the SOR and is only being considered, if at all, in assessing mitigation, credibility, and the whole-person concept.

¹⁰ See *infra* n. 3.

¹¹ Item 6.

his and his wife's diagnosed mental health condition (depression).¹² A realtor referred Applicant to a financial specialist to improve his credit.

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. AG ¶ 2.

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 make certain that applicants: (a) receive fair notice of the issues, (b) have a reasonable opportunity to address those issues, and (c) are not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In deciding a case, a judge must resolve any doubt raised by the evidence in favor of the national security. AG ¶ 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.

¹² Applicant did not further elaborate or provide evidence as to how his and his wife's mental health condition impacted their finances. Although the negative impact depression and other serious mental health conditions can have on a person are well known, Applicant bore the burden of showing how this matter impacted his family's finances and what, if anything, they have done to address the issue. Additionally, as Applicant did not report this mental health issue on his clearance application (Item 2 at 32), it appears this condition surfaced after the negative financial matters at issue began.

Analysis

Guideline F, Financial Considerations

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. . . .¹³

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 cast doubt upon a person's judgment, self-control, and other qualities essential to protecting classified information.¹⁴

In assessing Applicant's case, I considered all the disqualifying and mitigating conditions under Guideline F, including the following:

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

AG ¶ 19(b): unwillingness to satisfy debts . . . ;

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

AG ¶ 20(a): the behavior happened so long ago, . . . 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 . . . and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem . . . 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; and

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.

¹³ AG ¶ 18.

¹⁴ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

A security clearance adjudication is not a debt collection process. Instead, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security responsibilities.¹⁵ Moreover, the resolution of past financial issues alone without evidence of true reform and rehabilitation is of limited probative value in the security clearance context.¹⁶

Applicant admits he accumulated 16 debts totaling over \$30,000. He discussed the majority of these debts during his March 2014 security clearance interview. He has repeatedly promised to address and resolve these debts during the course of the present security clearance review. He has been gainfully employed since 2011 and, as of 2014, reported over \$4,000 in monthly discretionary income. A vast majority of the SOR debts at issue are for amounts far less than Applicant's reported monthly discretionary income. Notwithstanding his apparent financial ability to repay his debts, Applicant has yet to take action to address the vast majority of his delinquent debts. The only SOR debts that he had resolved as of the close of the record were three debts totaling about half his monthly net income and two of which were satisfied through garnishment. AG ¶¶ 19(a) – 19(c) apply. None of the mitigating conditions fully apply.

Individuals applying for a security clearance are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.¹⁷ Applicant failed to meet his burden of proof and persuasion. His financial situation continues to raise a security concern.

Whole-Person Concept

An administrative judge must make a commonsense judgment about a person's security clearance suitability after considering all available, reliable and relevant information. This is referred to as the whole-person concept.¹⁸ A judge's assessment in these cases is informed by the guidelines, as well as the non-exclusive factors set forth in AG ¶¶ 2(d) and 2(f). I hereby incorporate my above analysis and highlight some additional whole-person factors.

¹⁵ See generally ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

¹⁶ Compare, ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (despite the presence of unresolved debt, Board affirmed judge's grant of a clearance because clear evidence of reform and rehabilitation), with, ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (applicant's resolution of alleged financial issue (filed overdue tax returns) was insufficient to mitigate security concerns, because no extenuating circumstances to explain financial issue and no evidence of financial reform).

¹⁷ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008). See also ISCR Case No. 15-02585 (App. Bd. Dec. 20, 2016) (reasonable for judge to expect an applicant to present documentary evidence).

¹⁸ See generally AG ¶ 2. See also SEAD-4, ¶ E.4; Directive, ¶ 6.3.

Applicant served in the U.S. military for over 20 years, and for the past six years he has supported the U.S. military in a dangerous overseas location. However, he has yet to take the necessary responsible steps to put his financial house in order. This is despite being aware for some time that his delinquent debts placed his clearance eligibility (and his likely continued employment as a federal contractor) in jeopardy. He may in the future be able to re-establish his eligibility by demonstrating that he is responsibly managing his personal finances in the manner expected of all clearance holders. At present, however, the questions and doubts about his eligibility, which were raised by his financial situation, remain. Overall, the record evidence leaves me with doubts as to Applicant's eligibility for continued access to classified information.¹⁹

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):	AGAINST APPLICANT
Subparagraphs 1.a – 1.j:	Against Applicant
Subparagraphs 1.k and 1.l:	For Applicant
Subparagraphs 1.m – 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t and 1.u:	Against Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to continue Applicant's access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

¹⁹ I considered the exceptions listed in Appendix C to SEAD-4, and do not find that any are warranted in this case. Notably, in light of Applicant's repeated unkept promises to provide proof that he is repaying his past-due debts, continuing his clearance upon condition of proof of repayment and maintenance of financial stability would not be appropriate in this case. Furthermore, Applicant's apparent lack of candor during the security clearance investigation also weighs against exercising this discretionary authority. See SEAD-4, ¶ E.3 and AG ¶ 2(h); *contrast with* ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011) (under previous version of the guidelines, judges had "no authority to grant an interim, conditional or probationary clearance.")