



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-00788
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial problems. Clearance is granted.

Statement of the Case

On February 12, 2016, 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 Applicant answered the SOR and requested a decision on the administrative (written) record (Answer).

On April 21, 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 five exhibits for admission into the record. Applicant submitted a response to the FORM (Response). The exhibits accompanying the FORM

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).

and the documents Applicant submitted with his Answer and Response are admitted into the record.² On May 9, 2017, I was assigned the case for decision.³

Findings of Fact

Applicant, 49, is employed as an engineer by a defense contractor. He is applying to retain a security clearance, which he was initially granted at least twenty years ago when he began working for his current employer.

Applicant graduated high school in 1986, and then enlisted in the U.S. military. He served on active duty for 10 years, receiving an honorable discharge in 1996. He married in 1997 and has two adult children.

In approximately 2006, Applicant opened a catering business. The business faltered during the 2008 recession and he closed it in 2011. Applicant incurred a number of delinquent debts related to the failed business, including the \$40,000 in debt listed in the SOR. Applicant submitted documentation with his Answer and Response showing that he addressed and resolved each of the SOR debts.⁴ As of the submission of the case for decision, all the SOR debts were resolved. Applicant's credit reports do not reflect any other delinquent accounts that are not resolved.

Law & 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

² Administrative documents, including confirmation of Applicant's continuing sponsorship for a clearance, were collectively marked and attached to the record as Appellate Exhibit I.

³ On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD-4), revising the Adjudicative Guidelines. The revised adjudicative guidelines are applicable to all security clearance decisions issued on or after June 8, 2017. Accordingly, I have applied the revised adjudicative guidelines (hereinafter "AG"). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

⁴ SOR 1.a, 1.b, 1.d, and 1.f (credit card debts incurred for former business). See Answer at 9-12 (settled and paid 1.b and 1.f), Response at 5-8 (settled and paid 1.a and 1.d).

SOR 1.c (business-related debt for electric bill). See Response at 3-4 (payment).

SOR 1.e (2010 federal payroll taxes). See Answer at 3-8 (IRS documentation showing installment payments made in 2014 and 2015, bringing the balance down from \$11,000 to \$7,000); Response at 9-11 (proof paid outstanding amount).

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.

Analysis

Guideline F, Financial Considerations

Applicant incurred delinquent debt when his attempt to open a catering business failed during the recession. The presence of delinquent debt can raise the Guideline F security concern, which is explained at 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. . . .

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.⁵

⁵ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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

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 (e.g., loss of employment, a business downturn, . . .), and the individual acted responsibly under the circumstances; and

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

Applicant's past financial problems were attributable to a failed business venture. He attempted to start a business in a segment of the economy that is traditionally difficult to break into and maintain a profitable enterprise. This, when coupled with the recent economic recession, led to the businesses' demise and Applicant's inability to pay his debts.

Applicant did not simply walk away from his debts. Instead, he responsibly addressed each of his debts, prioritizing his tax debt. He resolved each of the debts listed in the SOR through negotiated settlements and payment plans.

The circumstances giving rise to Applicant's past financial problems do not cast doubt on his ability and willingness to continue to properly handle and safeguard classified information. Additionally, the manner in which he addressed the debts that he incurred following his businesses failure raises favorable inferences regarding his continued suitability. Applicant's present financial situation does not raise a security concern. AG ¶¶ 20(a), 20(b), and 20(d) apply.

After a complete and thorough review of the record evidence, including considering the whole-person factors set forth in AG ¶ 2, I find that Applicant met his heavy burden of proof and persuasion in mitigating the security concerns at issue. Furthermore, he established his eligibility for continued 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.f: **For Applicant**

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the interest of national security to continue Applicant's eligibility for access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge