



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-01238
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2017

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 August 24, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations and personal conduct guidelines.¹ Applicant answered the SOR (Answer), waived his right to a hearing, and requested a determination on the administrative (written) record.

On June 10, 2016, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. With the FORM, Department Counsel forwarded to Applicant nine exhibits that the Government offers for admission into the record.

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the FORM stating: "I have read and reviewed all info and I have no objections and no additional info to submit."²

On May 9, 2017, I was assigned the case for decision. The exhibits submitted with the FORM are admitted into evidence without objection.³

Findings of Fact

Applicant, a high school graduate, is applying for a security clearance for the first time. In April 2013, he was hired by his current employer to work at a U.S. military installation. In May 2014, he submitted a security clearance application in connection with this federal contracting position.

The clearance application reflects that Applicant experienced periods of unemployment before being hired by his current employer in 2013, and he left a previous job in 2004 to return to school (no further information regarding this education was provided). He also reported not timely filing his taxes and incurring about \$5,000 in back taxes, which he subsequently resolved.

In June 2014, during a clearance interview, Applicant corrected a number of mistakes he had made on the clearance application. He was also asked about a number of delinquent debts that appeared on his credit report. He stated that he was unaware of the debts, but promised to look into each of them and address them after the interview.

Over a year after the clearance interview, in August 2015, the SOR was issued. It lists eight delinquent consumer-related debts totaling over \$35,000.⁴ The debts include a judgment for nearly \$12,000 (SOR 1.s) and a \$9,000 debt, which is the deficiency balance owed after his car was repossessed and sold at auction (SOR 1.n). Applicant discussed these two SOR debts and several other SOR debts during his clearance interview, including a relatively minor \$80 debt (SOR 1.t). He admits all the SOR debts in his Answer. He provided no evidence that he took any action to address any of the debts or that he obtained financial counseling.

² Applicant did not provide any evidence as to what efforts, if any, he has taken to address the SOR debts or basis to dispute their legitimacy. He also provided no evidence regarding the current state of his finances or addressing the whole-person factors in AG ¶ 2(a).

³ Administrative documents, including confirmation of Applicant's continuing sponsorship for a clearance, were collectively marked and attached to the record as Appellate Exhibit I.

⁴ The SOR also lists 12 medical debts totaling less than \$2,000. Nothing about the facts and circumstances giving rise to these debts raises a security concern. I have, however, considered these medical debts in assessing whether matters beyond Applicant's control negatively impacted his financial situation. SOR 1.b – 1.m, the medical debts, are resolved in Applicant's favor.

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 for a security clearance, 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.

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 ¶ E3.1.15.⁵

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

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 difficulty at times in making suitability determinations and the paramount importance of protecting national security, 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.

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.

⁵ See also ISCR Case No. 15-01208 at 4 (App. Bd. Aug. 26, 2016); ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011).

Analysis

Guideline E, Personal Conduct

The SOR alleges Applicant deliberately falsified his security clearance application by not reporting the delinquent debts listed on the SOR. Applicant denies he deliberately falsified his clearance application, because he was unaware of his delinquent accounts when he filled out the clearance application (Answer). The deliberate falsification of a clearance application raises the personal conduct security concern, which 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.

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA and continues throughout the security clearance process. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or her SCA. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.⁶

During his clearance interview, Applicant, a high school graduate, corrected a number of common mistakes that first-time applicants make in filling out a security clearance application – a form that has grown exponentially in length and complexity in the last several years. Applicant disclosed significant negative information (untimely tax filings and back taxes) in response to relevant questions on the application about his financial history. Applicant's voluntary disclosure of this negative information is inconsistent with the expected conduct of an individual who is purportedly trying to mislead the Government about the state of his or her finances. Applicant's explanation in his Answer for why he did not list the SOR debts on the application is consistent with the explanation he first provided during his clearance interview nearly three years ago. After a complete and thorough review of the record evidence, I find that Department Counsel did not provide sufficient evidence to meet the Government's burden of proof. Accordingly, the Guideline E allegation is decided in Applicant's favor.⁷

⁶ See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

⁷ In reaching this conclusion I took into account the omission and the number of delinquent debts at issue, which includes a judgment. However, any potential adverse inference that can be drawn from this evidence is outweighed by the favorable evidence noted above. *Contrast with* ISCR Case No. 12-03415 (App. Bd. July 25, 2014) (judge's finding that applicant deliberately omitted delinquent debts supported by evidence he had hired debt repair firm to resolve his delinquent accounts sometime before submitting security clearance application).

Guideline F, Financial Considerations

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.

As stated in the relevant portion of AG ¶ 18 quoted above, the security concern at issue 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.⁸

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

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

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

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(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;

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 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.

⁸ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

Applicant accumulated over \$35,000 in delinquent debt. He discussed the majority of the debts during his June 2014 clearance interview, including two sizeable debts totaling over \$20,000 and a relatively minor \$80 debt. He promised during that interview to address his delinquent debts, but did not provide any evidence that he has done so. Although underemployment and medical issues may have negatively impacted his financial situation, he has been gainfully employed as a federal contractor for the past three years and (apparently) has yet to take action to put his financial house in order. AG ¶¶ 19(a) and (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.⁹ Applicant failed to meet his burden of proof and persuasion. His financial situation continues to raise a security concern.¹⁰

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.n – 1.t:	Against Applicant
Subparagraphs 1.b – 1.m:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Francisco Mendez
Administrative Judge

⁹ 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 to support their position they addressed debts at issue or have reasonable basis to dispute the debt).

¹⁰ In reaching this conclusion, I considered the whole-person concept. See AG ¶ 2(a).