



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-03810
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2017

Decision

MENDEZ, Francisco, Administrative Judge:

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

Statement of the Case

On November 12, 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 Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information.

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.

On September 15, 2016, a date mutually agreed to by the parties, a hearing was held.² Applicant testified at the hearing, and Government Exhibits 1 – 5 and Applicant's Exhibits A – L were admitted into the administrative record without objection. Applicant timely submitted Exhibit M post-hearing and it was admitted without objection. The transcript of the hearing (Tr.) was received on September 27, 2016, and the record closed on October 14, 2016.³

SOR Allegations

The SOR allegations can be grouped into three categories:

First, Applicant incurred a delinquent debt related to his former family home. This is the debt referenced in SOR 1.b. Applicant provided documentation showing that he paid the debt.

Second, Applicant incurred debt related to the condo he lived in following his separation from his wife. These are the debts referenced in SOR 1.a, 1.c, 1.d, and 1.g, totaling over \$85,000. Applicant submitted documentation substantiating his testimony that he addressed these debts. He paid the debts or is paying them through an agreed-upon payment plan with the creditor.

Third, Applicant incurred other, miscellaneous, consumer-related debt listed at SOR 1.e, 1.f, and 1.h – 1.i, totaling about \$6,000. He supplied documentation showing that he addressed each of the debts. He either paid the debt, is paying the debt, or successfully disputed the debt.

Findings of Fact

Applicant, 51, served in the U.S. military for over 20 years, receiving an honorable discharge upon his retirement from the military in 2003. Since retiring from the military, Applicant has been gainfully employed as a federal contractor, except for two short periods of time when he was unemployed in 2005 and 2013. This unemployment was the result of being fired by his former employers. He has been with his current employer for about a year. He earned an associate's degree in information systems management in 2013, and has held a security clearance since about 1983.

Applicant married in 1985, and separated from his wife in 2009. They have one child. Upon separating, Applicant's wife kept the family home. Applicant states that his estranged wife was responsible for paying the mortgage. In 2012, the marital home was foreclosed due to nonpayment. Applicant states that he is not liable for any debts

² Prehearing correspondence, the notice of hearing, and the case management order are attached to the record as Appellate Exhibits (App. Exh.) I – III, respectively.

³ At hearing, Department Counsel also submitted a chart summarizing each of the allegations. The chart was re-marked and is appended to the record as App. Exh. IV. Department Counsel's e-mail regarding Applicant's post-hearing submission, Exhibit M, is appended to the record as App. Exh. V.

associated with the foreclosure, except for a judgment for past-due homeowner's association fees entered against him in 2012. Applicant fully satisfied that judgment in 2015. Credit reports from 2015 and 2016 do not list any other delinquent accounts associated with the foreclosed home. Applicant voluntarily disclosed the foreclosure on his recent security clearance application (SCA) and discussed it, as well as his overall financial situation, during his clearance interview. This debt is referenced in SOR 1.b.⁴

Applicant lost a condominium that he purchased in 2007 to foreclosure in 2014. He started having financial problems with the condo almost as soon as he purchased it. In 2008, the condo board passed a special assessment for improvements. Applicant's share of the assessment was approximately \$40,000. He was unable to pay the increased cost associated with the condo, leading to a number of judgments over the years, including those referenced in SOR 1.a, a 2014 judgment for \$3,400; 1.c, a 2010 judgment for \$2,613; and 1.d, a 2008 judgment for nearly \$29,000. Applicant defaulted on the mortgage for the condo, which is the \$52,000 collection account referenced in SOR 1.g. He submitted documentation showing that he satisfied the 2010 and 2014 judgments in 2016. He also submitted documentation showing that he entered into two separate payment plans in January and March 2016 to satisfy any unpaid amounts for assessments owed to the condo association and the remaining balance owed on the mortgage for the condo. He also submitted documentation reflecting that he made payments per the terms of those agreements. He alerted the Government regarding the adverse financial information relating to the condo on the SCA and discussed it during his clearance interview.⁵

Applicant also accrued delinquent accounts for credit card, medical bills, and other consumer-related debts. These miscellaneous debts are referenced in SOR 1.e, 1.f, and 1.h – 1.i, and together total approximately \$6,000. Although Applicant did not recognize a number of these debts, he submitted documentation reflecting that he addressed each of them with the assistance of a credit repair firm. Specifically, he provided documentation showing that he satisfied some of the SOR debts, is currently paying the credit card debt referenced in SOR 1.k (reducing the past-due balance from \$3,300 to \$705), and successfully disputed or otherwise resolved some other debts.⁶

Applicant retained the services of the credit repair firm shortly before the SOR was issued. He was in the process of purchasing a home and when he checked his credit report came to realize that he had a number of delinquent debts he needed to address. With the assistance of the credit repair firm, Applicant addressed his past

⁴ Tr. 33-34; Exhibits 1, 2, 5, B, I, J, and M; App. Exh. V. The record is silent as to whether Applicant and his wife divorced. Applicant did not submit a separation agreement or other document reflecting how the marital property, assets, and debts were divided. Although Applicant stated during his clearance interview that he did not know where his child lived because there were "money issues" between Applicant and his wife, no evidence was submitted showing any delinquency involving a court-ordered support obligation.

⁵ Tr. 30-33, 34-42, 46-48, 72-73; Exhibits 1, 2, D, and F; App. Exh. V.

⁶ Tr. 44-46, 48-52, 74-75; Exhibits 1, 2, E, H, G, I, J, and L.

debts and improved his credit. He recently purchased a home and states that he is current on the mortgage.⁷

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.

Administrative judges are responsible for ensuring that an applicant receives fair notice of the security concerns at issue, has a reasonable opportunity to address those concerns, 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.

An individual who is granted 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. Security clearance 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.

⁷ Tr. 52, 76-78; Exhibits H and L.

Analysis

Guideline F, Financial Considerations

The financial considerations security concern 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.

The security concern under this guideline is not limited to a consideration of whether a prospective or active clearance holder 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 such delinquent debt cast doubt upon the person's judgment, self-control, and other qualities essential to protecting classified information.⁸

Applicant started accumulating delinquent debt in around 2008 and, at its peak, his delinquent debt totaled over \$90,000. This record evidence raises the financial considerations security concern and, specifically, the disqualifying conditions listed at AG ¶¶ 19(a) and 19(c).

Once a disqualifying condition is established, the burden shifts to an applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. In assessing Applicant's case, I have considered all the available mitigating conditions, including the following:

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;

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

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

provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial situation was not related to or caused by matters beyond his control. Although he separated from his wife in 2009, he was already living beyond his means by that point. He started defaulting on his financial obligations in 2008, following the special assessment passed by the condo board. His creditors routinely sought judgments to force him to pay his debts. This record evidence raised serious questions regarding Applicant's continued suitability for a clearance.

However, starting in about 2014, Applicant began taking concrete steps to address and resolve his delinquent debts. He presented documentation reflecting the substantial efforts he made from that point to the present to put his financial house in order. Notably, he addressed the major SOR debts totaling about \$87,500 that are associated with his former marital residence and condominium. He satisfied three of the judgments, negotiated payment plans to satisfy the remaining two debts, and made payments as agreed. He also resolved or is in the process of resolving the other miscellaneous SOR debts, which total about \$6,000.

Furthermore, Applicant enlisted the services of a credit repair firm and, with their assistance, qualified for a new mortgage, purchased a home, and is current on this new mortgage obligation. Therefore, although Applicant's failure to maintain his finances in good stead raised red flags about his continued suitability, his recent track record of debt repayment and financial stability denotes positive changes in the manner in which he handles his personal financial obligations.

Individuals applying to attain or maintain a security clearance are not required to be debt free nor are they required to manage their personal financial affairs in some perfect, unattainable fashion. 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 clear, unambiguous evidence to refute, explain, or mitigate security concerns raised by their personal circumstances, including circumstances giving rise to delinquent debt. Moreover, they bear the burden of showing that they manage their present finances in a responsible manner.⁹ This is the heavy burden of persuasion that all prospective and active clearance holders must meet before they can be granted eligibility for a security clearance.

Here, Applicant met his heavy burden of persuasion. Specifically, I find that AG ¶¶ 20(a), 20(c), 20(d), and 20(e) apply, either in full or in part, and when considered with the whole-person factors noted herein, mitigate the security concerns at issue.

⁹ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

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 non-exclusive factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant's past financial problems were largely self-made and, although it took him longer than one would expect an individual in his position to take to address his financial situation, he did so. As of the close of the record, he had addressed each of the SOR debts and has not accumulated other delinquent debt in several years.

Furthermore, Applicant voluntarily disclosed the information regarding his past financial issues on his SCA and then discussed them during his clearance interview. This level of cooperation and candor provides some measure of assurance that the Government can continue to entrust him with the responsibility of discharging his security obligations, including the duty to disclose potentially adverse information. Additionally, in assessing Applicant's judgment, reliability, and other pertinent character traits, I extended favorable consideration to his military service and that he earned a college degree while working full time later in life.

After weighing the evidence, both favorable and unfavorable, I find that Applicant met his heavy burden of persuasion. He mitigated the security concerns at issue and 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.i: **For Applicant**

Conclusion

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

Francisco Mendez
Administrative Judge