



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-07265
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/08/2017

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 May 13, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Specifically, the SOR lists 10 collection or charged-off accounts totaling approximately \$20,000.

On June 20, 2016, Applicant answered the SOR. He declined the opportunity to present his case at a hearing and requested a determination based solely on the written record (Answer). In his Answer, Applicant stated that he anticipated paying off the mortgage on his home in a year's time and, at that point, he would have the necessary funds available to address his delinquent accounts.

On August 25, 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, Items 1 – 5, which the Government offers for admission into the record. In the FORM, Department Counsel argued, *inter alia*, that

Applicant had not submitted documentation to show that he had responsibly addressed any of the listed SOR debts or had a reasonable basis upon which to dispute the debts, which are listed on credit reports (Items 4 and 5) submitted with the FORM.

Applicant was given 30 days to submit a response to the FORM, including the opportunity to submit evidence showing he had resolved or attempted to resolve the listed SOR debts. He was also given the opportunity to raise objections to the evidence offered by Department Counsel with the FORM. He did not submit a response or raise an objection. Accordingly, the Government's exhibits are admitted into the administrative record.

On August 8, 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.¹ Applicant did not submit any matters and the record closed on August 30, 2017.

Findings of Fact

Applicant, 62, is a high school graduate and has been working for his current employer since February 2014. He has been employed as a Federal contractor since approximately 2003. He has experienced periods of unemployment, generally lasting from a month to six months. He served in the U.S. military from 1974 to 1987, and reports on his security clearance application that he received an honorable discharge. He also reports having his security clearance either suspended, denied, or revoked in 1986, but the record is silent as to the basis for this previous adverse clearance action.

Applicant self-reported on his security clearance application a number of delinquent debts that he attributes to periods of unemployment and underemployment. He was sent the SOR in May 2016. The SOR lists 10 delinquent accounts totaling about \$20,000. Applicant admitted some of the debts and denied others. For those he denied, Applicant claimed that: (a) he resolved some of them in the past, (b) were duplicates of other listed SOR debts, or (c) were not listed on a recent credit report that he reviewed. In responding to the SOR in June 2016, Applicant stated that he would be in a position in a year's time to address his outstanding delinquent accounts. He submitted no documentation showing he addressed any of the SOR debts, or refuting the validity of the SOR debts. He also did not present evidence that would tend to raise a question as to the accuracy and reliability of the credit reports submitted with the FORM.

Law, Policies, and Regulations

This case is decided under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

¹ Confirmation of Applicant's continuing sponsorship for a security clearance and correspondence sent to the parties reopening the record were marked Appellate Exhibits I and II, respectively.

1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4).²

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “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. 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 ¶ E3.1.14.³ 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 must remain fair and impartial, and conduct all hearings in a timely and orderly manner. Judges must carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

² Security clearance decisions must be based on current DoD policy and standards. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003). Nonetheless, I considered the previous version of the guidelines, which were in effect when the SOR was issued, and my ultimate conclusion would have been the same.

³ See *also* ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017) (decision reversed because Department Counsel failed to present sufficient evidence); ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (rejecting argument that non-alleged conduct can be the sole basis for an adverse decision).

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

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. . . .⁴

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

In assessing Applicant's case, I considered all the disqualifying and mitigating conditions listed 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;

⁴ AG ¶ 18.

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

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.

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.⁶

The SOR debts reflect the accumulation of a sizeable amount of delinquent debt by Applicant. These debts are established through Applicant's admissions in his Answer and the other record evidence.⁷ Applicant has been gainfully employed since February 2014, and he has been provided multiple opportunities to submit documentary evidence showing that he has addressed his financial situation and is managing his finances in the manner expected of all clearance holders. He elected not to present such evidence and, thereby, failed to meet his burden of proof and persuasion.⁸

Accordingly, I find that AG ¶¶ 19(a) – 19(c) apply. None of the mitigating conditions fully apply. Applicant's financial situation remains a security concern.⁹

⁶ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008). *See also* ISCR Case No. 15-02585 at 2 (App. Bd. Dec. 20, 2016) ("It is reasonable for Judges to expect applicants to present documentation about the satisfaction of individual debts.")

⁷ ISCR Case No. 14-03910 at 2 (App. Bd. June 24, 2015) ("[I]t is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the Government's obligations under ¶ E3.1.14 of the Directive . . . [a]t that point, the burden shifts to Applicant to establish either that she is not responsible for the debt or that matters in mitigation apply."); ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) (burden shifts to applicant to mitigate security concerns arising from SOR allegations that he or she admits or that are established through other record evidence).

⁸ Applicant apparently rests his case on his uncorroborated claim that some of the SOR debts no longer appear on his credit report. Assuming that some or all the SOR debts are no longer listed on Applicant's credit report, such evidence by itself would be insufficient to mitigate the security concerns at issue. *See* ISCR Case No. 12-09590 at 3 (App. Bd. Jan. 15, 2016) ("Without more, the absence of the debts from a subsequent credit report is not dispositive . . .")

⁹ In reaching this adverse decision, I considered the whole-person concept. *See generally* AG ¶ 2. I also considered the exceptions listed in SEAD-4, Appendix C, but none are warranted in this case.

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

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 grant Applicant initial or continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge