



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08455
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

10/06/2017

Decision

MENDEZ, Francisco, Administrative Judge:

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

Statement of the Case

On October 5, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. On November 3, 2016, Applicant answered the SOR (Answer) and requested a decision on the administrative (written) record.

On December 19, 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) that the Government offers for admission into the record. Applicant submitted a response to the FORM on February 2, 2017 (Response). With the Response, Applicant submitted several documents regarding family and medical issues that impacted his finances. These documents were collectively marked Exhibit A. Without objection, Items 1 – 5, Applicant's Response, and Exhibit A, are admitted into the record.

On October 1, 2017, after receiving confirmation that Applicant remained sponsored for a clearance, I was assigned his case for decision. No additional matters were submitted by either party for inclusion in the record.

Findings of Fact

Applicant, 57, earned his high school diploma in 1980 and shortly thereafter enlisted in the U.S. military. He retired from the military in 1998. He was granted a security clearance in approximately 1983. Since retiring from the military, Applicant has been primarily employed as a federal contractor, but he has experienced periods of unemployment. He has been gainfully employed as a federal contractor since July 2013.¹ He admits that he has “a lot of debt that I haven’t paid.”² He has made repeated promises during the course of the security clearance process that he would take action to address his past-due debts.³ He submitted no documentation showing that he addressed the past-due debts alleged in the SOR, including the \$20,000 in debts that he admits.

Applicant’s financial problems date back to at least 2002, when he stopped making payments on a time share that he had purchased about a month earlier. The creditor eventually charged off the time-share debt. In 2009, Applicant was arrested and charged with issuing a bad check.⁴ Applicant attributes his past and present financial problems to a number of issues:

- Overspending during his first marriage;
- Contentious and costly divorce in 2009;
- Raising and financially supporting three children on his own after the divorce;
- His oldest son’s petty criminal activity and resulting legal expenses;
- Unstable employment and periods of unemployment;
- Death of several family members; and
- Health issues.⁵

¹ Item 2; Item 3 at 6.

² Item 1, Answer, Enclosure 2 at 1.

³ Items 1 - 3; Response.

⁴ Item 2 at 36; Item 3 at 9 (bounced check arrest and time share). These past financial issues were not alleged in the SOR and were only considered in assessing Applicant’s mitigation case. See *infra* n. 14.

⁵ Items 1 - 3; Response; Exhibit A.

Security Clearance Application and Interviews

In July 2012, Applicant submitted a security clearance. In response to questions about his financial history, Applicant reported having nine delinquent accounts. For each of the nine debts, Applicant stated that he had already resolved the debt, was in the process of resolving the debt, or after starting his new job, would address the debt.⁶

In July 2015, Applicant's security clearance background interviews took place. Applicant discussed with the security clearance investigator the nine delinquent accounts listed on his security clearance application, as well as over 20 other delinquent accounts listed on his credit reports. These other delinquent accounts included a debt for over \$10,000 for a repossessed vehicle (SOR 1.a), a 2005 state tax lien (SOR 1.o), and a \$36 collection account (SOR 1.m).⁷ Applicant informed the investigator that he started making payments towards some of his delinquent accounts, including the state tax lien, in 2012, when he was a federal employee and was told by his military employer that he needed to address his past-due debts.⁸

During the July 2015 security clearance interviews, Applicant also reported that after paying his recurring monthly expenses and debts that he had over \$1,600 in monthly disposable income.⁹ He repeatedly promised the investigator that he would contact his overdue creditors and make arrangements to resolve his past-due debts.¹⁰

As for the \$36 collection account (SOR 1.l), Applicant told the security clearance investigator that he paid the debt a few days before the first interview took place.¹¹ He did not have proof at the time of the first interview, so the investigator made arrangements to meet with Applicant a few days later to give him time to review his records and gather any needed documents. The summary of the second interview prepared by the investigator does not reflect that Applicant provided a copy of a receipt or other document showing that he paid the \$36 collection account.¹²

Answer

In November 2016, Applicant submitted his notarized Answer. He admitted those debts referenced at SOR 1.a, 1.b, 1.f, 1.j, 1.l, 1.m, and 1.n, which total over \$20,000. He submitted no documentation showing that he had addressed any of these debts, including

⁶ Item 2 at 44-52 (one of the debts Applicant self-reported on the application was the charged-off time share account that he defaulted shortly after he purchased it in 2002).

⁷ Item 3 at 9-16.

⁸ Item 3 at 12.

⁹ Item 3 at 17.

¹⁰ Item 3 at 9-16.

¹¹ Item 3 at 15.

¹² Item 3 at 16-18.

the same \$36 collection account that he told the security clearance investigator he had supposedly paid shortly before his first security clearance interview in July 2015.

Applicant denied the other non-tax-related debts referenced in the SOR, which together total about \$4,000. For these other debts, Applicant explained that he denied them because they no longer appeared on his credit reports. He did not submit a credit report with his Answer to corroborate his assertion.

Applicant also denies the 2005 state tax lien referenced in SOR 1.o and that he discussed with the investigator in July 2015. He claims that he satisfied the debt in the past, but submitted no documentation to corroborate his claim. Applicant further stated in his Answer that he was advised to file for Chapter 13 bankruptcy to address his financial situation and was considering following said advice.

Response

In February 2017, Applicant submitted his Response to the FORM. For the first time, he claimed that the SOR debts that no longer appeared on his credit report were debts he had paid. He did not submit a credit report or other documentation showing he had paid any of the SOR debts. He further stated in his Response that he had discussed his financial situation with his security manager and an attorney and was going to file for Chapter 13 bankruptcy to resolve his debts. No evidence that Applicant took this or any other action to address his past-due debts was submitted.

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, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).¹³

“[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,

¹³ Nonetheless, I have considered the previous version of the adjudicative guidelines that were in effect at the time the SOR was issued and my ultimate decision in this case would have been the same.

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 must remain fair and impartial, and 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, ¶ E3.1.32.1.¹⁴

Any doubt raised by the evidence must be resolved by a judge 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.

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

¹⁴ However, a judge's mere disbelief of an applicant's testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Likewise, a judge can only use non-alleged conduct for specific limited purposes, such as, assessing mitigation and credibility, unless an applicant is placed on notice that such conduct also raises a security concern. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

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. . . .¹⁵

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.¹⁶

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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

AG ¶ 19(f): failure to . . . pay annual Federal, state, or local income tax as required;

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 . . . 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;

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

¹⁵ AG ¶ 18.

¹⁶ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

Applicant's finances have been impacted by several matters largely beyond his control. However, he has been gainfully employed as a federal contractor for over four years and, as of July 2015, reported having over \$1,600 a month in disposable income that he could presumably use to address his delinquent debts. Notwithstanding the proceeding, Applicant has yet to take action to address his delinquent accounts, including a relatively minor \$36 collection account – a debt that he claimed during his first security clearance interview in July 2015, he had paid a few days earlier.

In 2012, Applicant, who was a federal employee at the time, was told by his employer that he needed to address his past-due debts. He purportedly made payments to his overdue creditors for a time and then stopped. He did not resume making payments after being hired by his current employer, as he promised in his security clearance application. He has now made similar promises to address his past-due debts in his Answer and Response. Applicant's past actions though reflect an unwillingness on his part to pay his debts. As of the close of the record, over \$20,000 in delinquent debt that Applicant was first made aware of during the July 2015 security clearance (and are reflected on credit reports admitted into the record without objection) remain.

Applicant has also been aware of the need to supply corroborating documentation showing he has addressed the SOR debts or validating his dispute of a debt. Although he provided a substantial amount of documentation regarding some family and medical issues that impacted his finances, he provided no documentation of his purported efforts to address his past-due debts. No evidence of financial or debt counseling was provided. 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.

Whole-Person Concept

Security clearance assessments about a person require a judge to closely examine the individual's conduct and circumstances, both past and present. In making such assessments, an administrative judge must consider the adjudicative guidelines and the whole-person concept.¹⁸ I hereby incorporate my above analysis and highlight some additional whole-person factors.

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). Contrast with ISCR Case No. 15-05478 (App. Bd. Oct. 2, 2017) (error for judge to accept applicant's self-serving assertions that he had resolved financial issues without corroborating documentary evidence).

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

Applicant served in the U.S. military and was first granted a security clearance in 1983. A number of issues largely beyond his control have negatively impacted his finances over the years. However, he has had the financial means to address his past-due debts for some time and has chosen not to pay his debts. He failed to act even after being informed that his delinquent debts placed his clearance (and likely continued employment as a federal contractor) in jeopardy. He may in the future be able to re-establish his eligibility for a security clearance, but, at present, the security concerns raised by his financial situation remain. Overall, the record evidence leaves me with doubts about 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 Directive, ¶ E3.1.25, are:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.z: Against Applicant

Conclusion

In light of the record evidence, it is not clearly consistent with the interests 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 SEAD-4, Appendix C, but none are warranted. For instance, conditioning eligibility upon Applicant providing proof that he addressed his past-due debts and that he remain financially stable would not be appropriate in light of his past history and dishonest statements about his past debt resolution efforts. See SEAD-4, ¶ E.3 and AG ¶ 2(h).