



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08709
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/19/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial problems. His family's finances took a turn for the worse when he suffered a massive heart attack and was out of work for some time. He was unaware of the extent of the delinquent debts incurred following his medical emergency until his security clearance interview. Afterwards, he took decisive action, addressing each of his past-due accounts. He did not deliberately fail to report the delinquent debts, which he subsequently resolved, on his security clearance application. Clearance is granted.

Statement of the Case

On June 16, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations and personal conduct guidelines.¹ Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information.

¹ The DOD CAF took this action 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). DOD CAF adjudicators reviewed the case using the previous version of the adjudicative guidelines, dated September 1, 2006, which were in effect at the time.

On April 11, 2017, a date mutually agreed to by the parties, a hearing was held. Applicant testified at hearing and the exhibits offered by the parties at the hearing and post-hearing were admitted into the administrative record without objection. (Government Exhibits 1 – 4; Applicant’s Exhibits A – V.) The transcript of the hearing (Tr.) was received on April 19, 2017, and the record closed on April 28, 2017.

Procedural Issue

On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a “single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.”² The National Security Adjudicative Guidelines (hereinafter “new adjudicative guidelines” or “AG”), which are found in Appendix A to SEAD-4, are to be used in all security clearance cases decisions issued on or after June 8, 2017.³ In light of this explicit direction (and absent lawful authority to the contrary), I have applied the new adjudicative guidelines. 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

Findings of Fact

Applicant, 61, has worked for the federal government, primarily as a contractor, for over 30 years. He has held a clearance the entire time. He and his wife married in 1985, and they have four children. His three oldest children have graduated college and begun their professional careers, while the youngest child is attending graduate school. When his children were younger, Applicant coached their different sports teams and sat on the board of a number of youth sports leagues. At work, he has received numerous awards and commendations for his exceptional performance and outstanding support to the U.S. Government. Currently, he manages a number of government projects and is generally tasked with developing creative solutions to complex technical issues. A number of coworkers and supervisors submitted letters commenting favorably as to Applicant’s reliability and characterized him as the consummate team player.

In 2005, Applicant returned to school to further his education. He earned his master’s degree in 2010, and was thereafter promoted to his current job position. He is generally recognized as a technical expert within his company.

In 2011, after completing a workout at the gym, Applicant suffered a severe heart attack. He was out of work for several months and incurred a sizeable amount of unreimbursed medical costs. His income went down while he was out of work. Unbeknownst to Applicant, his wife, who handled the household’s finances at the time

² SEAD-4, ¶ B, *Purpose*.

³ SEAD-4, ¶ C, *Applicability*.

⁴ See also ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Board stated: “Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.”)

and was worried about adding any additional stress to him, started falling behind on the mortgage and began relying on credit cards to pay their bills. He became aware that the mortgage payments had become late sometime in 2012. He discussed the matter with his wife and afterwards was led to believe they had caught up with their payments.⁵

In 2015, Applicant completed a security clearance application. He did not report having any delinquent accounts. He was unaware that he had any delinquent debts in his name. He knew about the late payments associated with the mortgage, but thought the issue had been resolved. He did not run his credit report before filling out the application.

After submitting the application, a government investigator interviewed Applicant as part of the clearance reinvestigation process. Applicant was informed by the investigator of a number of delinquent accounts appearing on his credit report, including a delinquent second mortgage loan on his home. Applicant credibly explained that he rushed through the application and that past applications he had filled out did not have the amount of questions or the detail required by the recent one. Because he was rushing, he did not realize he needed to report the delinquent mortgage account, even though he believed that the account was current. He credibly testified that he was unaware of his delinquent debts at the time he completed the clearance application.⁶

Following the interview, Applicant hired an attorney to help him address and resolve his delinquent debts. With the help of the attorney, Applicant: (1) settled and paid the debt, including the charged-off \$85,000 mortgage debt listed in SOR 1.a; or, (2) successfully disputed the debt; or, (3) paid debt after its accuracy was verified. As of the hearing, Applicant had addressed and resolved the eight listed SOR debts.⁷

Applicant also obtained financial counseling. He and his wife attended the counseling together. He is now more involved in managing their household finances. Their combined annual income is approximately \$160,000. Their expenses have decreased sharply in the past few years after paying off his medical bills and no longer having to pay for college-related expenses for their children. He offered a personal financial statement, which was admitted without objection, showing a large positive monthly net remainder (income remaining after paying expenses and debts). He has rebuilt his savings account and, as of the hearing, had a balance exceeding \$10,000.

Applicant submitted a current credit report post-hearing. The report shows that, but for the two to three year period following his 2011 heart attack, he has generally paid his bills on time. His current accounts are in good standing, including his primary mortgage account, which shows no delinquencies in the past few years.⁸

⁵ Tr. 10-15, 25; Exhibits I – S, U.

⁶ Tr. 22-26, 31-32, 36-38; Exhibit T.

⁷ Exhibit T. See also Tr. 16-22; Exhibits A – F.

⁸ Tr. 23-25, 34; Exhibits G, H, V.

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 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. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

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 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, “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” SEAD-4, Appendix A, ¶ 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

The SOR alleges that Applicant has a number of delinquents debts, which purportedly raise a security concern under Guideline F. The financial considerations security concern is explained at AG ¶ 18, which in pertinent part, states:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence.

Thus, 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 and other security-significant financial issues cast doubt upon a person's self-control, judgment, and other qualities essential to protecting classified information.⁹

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

AG ¶ 19(a): inability 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, 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.

⁹ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

A security clearance adjudication is not a debt collection process. Rather, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security obligations.¹⁰ Moreover, the resolution of past financial issues alone without evidence of true reform and rehabilitation is of limited probative value in the security clearance context.¹¹

Here, Applicant's security clearance eligibility was called into question by his past financial problems and, primarily, his failure until relatively recently to address the debt associated with the charged-off second mortgage loan. His past financial problems were largely attributable to matters beyond his control, notably, a serious medical condition that kept him out of work for a time and saddled him with a substantial amount of medical bills. His wife (understandably) kept him in the dark about their dire financial predicament to avoid placing additional stress on him. After becoming aware of their financial problem, Applicant responsibly addressed his delinquent debts, including the charged-off mortgage loan. He obtained credit counseling and his current financial situation is stable.

In short, the circumstances giving rising to Applicant's past financial problems and his present financial situation do not raise a security concern. AG ¶¶ 20(a) – 20(e) apply.

Guideline E, Personal Conduct

The SOR also alleges that Applicant deliberately failed to report his delinquent debts on his security clearance application. This allegation 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 or sensitive information.

The security clearance process is contingent upon the honesty and candor of all applicants. It begins with the answers provided in the clearance application and continues throughout the security clearance process. However, the omission of material, adverse information standing alone is not enough to establish that an applicant deliberately falsified his or her response to a question on a clearance application or asked by a security investigator. Instead, an administrative judge must examine the facts and circumstances surrounding the omission, including a person's age, level of education, work experience, and familiarity (or lack thereof) with the security clearance process, in assessing intent. An omission is not deliberate if the person genuinely forgot the information requested, sincerely was unaware or had no knowledge of the information,

¹⁰ See *generally* ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

¹¹ Compare, ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (despite the presence of unresolved debt, notably, a second mortgage loan tied to a property that had been foreclosed, Board upheld grant because clear evidence of reform and rehabilitation), *with*, ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (applicant's filing of overdue tax returns alone insufficient to mitigate security concerns, where no extenuating circumstances to explain the late tax filing or evidence of financial reform).

inadvertently overlooked or misunderstood the question, or earnestly thought the information did not need to be reported.¹²

Applicant was genuinely unaware of his family's financial problems at the time he submitted his security clearance application in 2015. He had suffered a massive heart attack a few years earlier and his wife hid their financial problems from him to avoid putting additional stress on him. After finding out about their financial issues, Applicant set about rectifying the problem. He has been upfront and candid throughout the security clearance process, including freely answering questions during his clearance interview and at hearing. He has taken steps to remain abreast of his family's finances going forward. In short, after examining all the evidence and having an opportunity to observe Applicant's demeanor at hearing, I find that he did not deliberately fail to report the information about his delinquent accounts on his clearance application.

Furthermore, after a complete and thorough review of the record evidence, while remaining mindful of my solemn obligation to resolve any unmitigated doubt in favor of protecting national security, I find that Applicant met his heavy burden of proof and persuasion in mitigating the security concerns at issue. Furthermore, he clearly 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.h:	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 clearly consistent with the interest of national security to grant Applicant eligibility for continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

¹² See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005). See *also* SEAD-4, Appendix A, ¶ 2(i) (falsifications and misrepresentations during the investigative or adjudicative stages of the clearance process raise heightened concerns about a regarding a person's judgment, reliability, and trustworthiness).