



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-08300
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

07/12/2018

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 November 14, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations and personal conduct guidelines. Applicant answered the SOR and requested a decision on the administrative (written) record without a hearing.

On March 16, 2018, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant nine exhibits, pre-marked Items 1 – 9, which the Government offers for admission into the record. Applicant submitted a Response to the FORM. With his Response, Applicant submitted a number of documents for the record. Applicant's Response and the accompanying documents were collectively marked Item 10. The exhibits offered by the parties, Items 1 – 10, are admitted into the record without objection.

On June 13, 2018, I was assigned the case. Subsequently, I received written confirmation that Applicant remains sponsored for a security clearance and reopened the record to provide the parties an opportunity to supplement the record and confirm Applicant's forum choice. Applicant confirmed he wanted a decision on the written record

without the benefit of a hearing and submitted Items 11 and 12, which were admitted into the record without objection. The record closed on July 9, 2018. See Appellate Exhibits I and II.

Findings of Fact

Applicant, 61, is single, but has shared a home with his cohabitant since 2012. He has three children, ranging in ages from 11 through 24. He has been employed as a federal contractor for nearly 20 years, and was hired by his current employer in 2017. He has held a security clearance since approximately 2000.

Applicant began experiencing financial trouble about 10 years ago with the unexpected birth of his second child. He hired a debt consolidation firm to help him settle and pay his debts, but the firm failed to live up to his expectations and purportedly exacerbated his financial problems.

In 2012, Applicant was diagnosed with cancer. Shortly thereafter, about the time Applicant started chemotherapy, his employer laid him off. He was unemployed until 2015.

Applicant has incurred over \$45,000 in delinquent debt, including a 2015 state tax lien for \$8,200 (SOR 1.a); approximately \$15,000 in judgments, some of which date back to 2008 (SOR 1.c – 1.e); and \$23,000 for a charged-off second mortgage (SOR 1.f). Applicant also admits that his primary mortgage is past-due (SOR 1.j), and that he has accumulated an additional \$4,600 in delinquent debt (SOR 1.g, 1.k – 1.m, 1.o, and 1.p).

After receiving the SOR, Applicant negotiated a payment plan to resolve his state tax debt and accepted a settlement offer to pay off the charged-off second mortgage account. He provided documentation with his Response, Item 10, showing that his 2016 federal tax refund (\$500) was intercepted and applied against his outstanding state tax debt; the balance on his state tax debt is down to \$8,000; and he made one payment consistent with the settlement agreement to resolve the second-mortgage account. He claims to have continued making the monthly payments to resolve the state tax debt and second-mortgage account, but did not provide documentation to corroborate his claims.

In April 2017, Applicant submitted a security clearance application (SCA). In response to relevant questions about his financial record, Applicant did not report the state tax lien and his delinquent accounts. In his Answer, Applicant explained that his failure to report was due to memory loss and other significant side from the cancer treatment. However, when initially confronted in July 2017 about his failure to report the state tax lien and other delinquencies, Applicant purportedly told a clearance investigator that he had not looked at his credit report in years and does not like discussing his poor financial situation. (Item 4 at 6.) Applicant denies deliberately falsifying his SCA.

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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

“[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. 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.

DOHA administrative judges “are creatures of the Directive,”¹ who derive their authority from the Directive. The Directive also sets forth an administrative judge’s responsibilities and obligations, including the requirement that a judge 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. See *also* ISCR Case No. 16-03712 at 3 (App. Bd. May 17, 2018).²

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* Security Executive Agent Directive 4 (SEAD 4), ¶ E.4. Additionally,

¹ ISCR Case No. 17-01213, n. 2 (App. Bd. June 29, 2018).

² However, a judge’s mere disbelief of an applicant’s testimony or statements, 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 non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

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 E, Personal Conduct

Conduct involving dishonesty during the security clearance process, such as the deliberate falsification of a security clearance application, raises a serious security concern. See *generally* AG ¶¶ 15, 16(a). Notwithstanding the apparent inconsistency between Applicant’s explanation for not listing his state tax lien and other delinquent accounts on his SCA, I credit Applicant’s later innocent explanation for the omission. This later explanation is reasonable, plausible, and consistent with the record evidence. Notably, in reviewing the SCA, Applicant omitted other material information that would generally be considered favorable, such as when he initially was granted a security clearance. Applicant’s cancer treatment clearly had discernible side effects, leaving him unable to accurately recall and understand some of the information requested in the SCA. Accordingly, the Guideline E allegation is decided for Applicant.³

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. See AG ¶ 18.

The security concern here 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. See *generally* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

³ See *generally* ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017) (judge erred in rejecting applicant’s plausible explanation in finding against him under Guideline E). See *also* ISCR Case No. 15-06990 (App. Bd. Jan. 11, 2018) (reversing adverse Guideline E decision).

In assessing Applicant's case, I considered the applicable disqualifying and mitigating conditions, including:

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

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

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

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(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

A security clearance adjudication is not meant to punish a person for past poor financial decisions. Furthermore, persons applying for a security clearance are not required to be debt free, or have unblemished financial records, or a certain credit score. However, they are expected to present evidence mitigating security concerns raised by the presence of delinquent debt and showing that they manage their present finances in a manner expected of all clearance holders.⁴

Additionally, a person who fails to timely file or pay his or her taxes, a basic and fundamental financial obligation of all citizens, bears a heavy burden in mitigating the financial considerations security concern.⁵ An administrative judge should closely examine the circumstances giving rise to a person's tax-related issues and his or her response to it. A judge must also carefully scrutinize a person's claim of financial reform and weigh it against the person's lack of judgment and reliability in failing to timely file his or her income tax returns or pay their taxes.⁶

Applicant failed to meet his burden of proof and persuasion. His medical condition and loss of employment exacerbated his already poor financial situation. However, he has been gainfully employed since 2015 and only after the SOR was issued did he begin to take action to resolve his past-due accounts. Moreover, a number of the judgment debts referenced in the SOR predate the matters beyond his control that negatively impacted his finances. Although Applicant receives some credit in mitigation for belatedly

⁴ See *generally* ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁵ See *generally* ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues).

⁶ ISCR Case No. 14-05794 (App. Bd. July 7, 2016); ISCR Case No. 14-00221 (App. Bd. June 29, 2016); ISCR Case No. 15-01031 (App. Bd. June 15, 2016); ISCR Case No. 12-09545 (App. Bd. Dec. 21, 2015).

taking action to resolve his state tax debt and the charged-off second mortgage account, the evidence he provided is insufficient to mitigate the security concerns raised by his still unpaid tax debt and the other delinquent accounts.⁷

Specifically, I find that AG ¶¶ 19(a), 19(c), and 19(f) apply. AG ¶¶ 20(b), 20(d), and 20(g) have some limited applicability, but are insufficient, even when considered with the favorable whole-person matters raised by the evidence,⁸ to mitigate the financial considerations security concern. Overall, the record evidence leaves me with doubts about Applicant's continued eligibility for access to classified information.⁹

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.g, 1.j – 1.m, 1.o, 1.p:	Against Applicant
Subparagraphs 1.h, 1.i, 1.n, 1.q:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

Conclusion

In light of the record evidence, it is not clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

⁷ See, e.g., ISCR Case No. 17-01382 (App. Bd. May 16, 2018) (reversing favorable decision because, in part, applicant took remedial action only after being placed on notice clearance was in jeopardy).

⁸ See *generally* AG ¶ 2. I specifically considered Applicant's years of holding a security clearance and the other matters he referenced in Item 12.

⁹ I also considered the exceptions listed in SEAD 4, Appendix C, including whether the grant of a clearance subject to additional security measures would sufficiently mitigate the security concerns at issue (such as, submission of regular reports to a security manager demonstrating continued payments and other responsible action to address past-due debts, as well as submission of credit reports and other documentation reflecting continued financial stability). However, Applicant did not provide sufficient evidence to warrant application of any of the exceptions in Appendix C.