



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-01985
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

01/05/2018

Decision

MENDEZ, Francisco, Administrative Judge:

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

Statement of the Case

On September 19, 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Applicant answered the SOR on October 8, 2015, and requested a determination on the administrative (written) record.

On December 23, 2015, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant six exhibits, pre-marked Items 1 – 6, which the Government offers for admission into the record. Applicant submitted a Response to the FORM. With his Response, Applicant offers a number of documents for the record. Applicant's Response and the accompanying documents were collectively marked Item 7. The exhibits offered by the parties, Items 1 – 7, are admitted into the record without objection.

Applicant's case was originally assigned to another administrative judge, but jurisdiction over the matter was lost before a decision was issued. In October 2017, Applicant's employer re-submitted Applicant for a security clearance. On November 3,

2017, I was assigned the case and subsequently received written confirmation that Applicant remains sponsored for a security clearance.¹ Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

Findings of Fact

Applicant is in his late 40s. He and his wife have been married for 17 years and they are the parents of two minor children. They owned and lived in their former marital residence for 15 years from 2000 to 2015. In 2014, after conducting an investigation, DoD found it clearly consistent with the national interest to grant Applicant a common access card in connection with his employment as a defense contractor.²

Applicant's financial problems were due to unsteady employment. He was unemployed from July 2011 to July 2012. He experienced additional periods of short-term unemployment between 2012 and 2014. He fell behind on his bills, including his mortgage. Failing to modify his mortgage and restructure his other debt, Applicant filed for Chapter 13 bankruptcy. He was able to make the monthly Chapter 13 plan payments until approximately late 2014, when he was laid off by his employer. Applicant then had the option to lower his monthly Chapter 13 payments. His lender, however, offered to accept a deed-in-lieu in return for Applicant dismissing the bankruptcy case. Applicant accepted the offer and the Chapter 13 bankruptcy case was dismissed. Applicant submitted the deed in lieu paperwork, a 1099-C, and the relevant portion of a recent credit report. These documents show that the \$93,000 mortgage debt was cancelled in June 2015. The 1099-C also reflects that the fair market value of Applicant's former home had decreased to \$40,000. The mortgage-related debt related to Applicant's former home comprises the bulk of the debt listed on the SOR and is referenced at SOR 1.e. This debt has been resolved.³

Applicant reported the Chapter 13 bankruptcy case (SOR 1.b), his delinquent mortgage, and a tax debt for his 2012 taxes on his security clearance application. He submitted the application in December 2014. He explained that the tax debt was due to a miscalculation. He addressed and paid the debt. With his Answer, Applicant submitted his IRS account transcript for the 2014 tax year. It reflects a \$0 account balance and that Applicant was issued a \$1,277 refund. The tax debt is referenced at SOR 1.a and has been resolved.⁴

After the Chapter 13 bankruptcy case was dismissed, Applicant reached out to his creditors about his other debts. He worked out settlement agreements and paid the debts or is paying them per the agreement terms. He provided the documentation showing that

¹ Appellate Exhibit I. I reopened the record to allow both sides an opportunity to submit updated information, but no additional evidence was submitted. The record closed on November 20, 2017. (Appellate Exhibit II.)

² Item 3 at 32.

³ Item 7.C; Answer.

⁴ Answer; Item 3 at 33-41. Although Applicant did not submit his IRS account transcript for the 2012 tax year, the IRS will generally not issue a refund to a taxpayer who has unpaid taxes for other years.

he addressed the debts referenced at SOR 1.c – 1.d and 1.g – 1.h.⁵ The only alleged debt that Applicant could not provide documentation regarding is a business-related debt listed at SOR 1.f. In both his sworn Answer and Response, Applicant explained that his former business partner had agreed to take on responsibility for the debt and, to the best of his knowledge, the debt had been resolved. Recent credit reports from 2015 and 2016 no longer reflect this debt.⁶

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. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

“[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.

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

⁵ Item 7.A, 7.B, 7.D – 7.F.

⁶ Items 4 and 5.

adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.⁷

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, 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 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.⁸

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.⁹

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

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

⁷ 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). 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).

⁸ AG ¶ 18.

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

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 . . . 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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

A security clearance adjudication is not meant to serve as a means to punish an applicant for past poor financial decisions. Furthermore, persons applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed on the SOR first. Instead, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their financial circumstances, to include the accumulation of delinquent debt. They also bear the burden of showing that they manage their present finances in a manner expected of those granted access to classified information.¹⁰

Applicant met his burden of proof and persuasion. He demonstrated that his past financial problems do not cast doubt on his current judgment, reliability, and ability and willingness to handle and safeguard classified information. His past financial issues were primarily attributable to unstable employment. Applicant did not use his financial difficulties as an excuse to not pay his debts. Instead, he attempted to address and resolve his past-due debts by directly negotiating with his creditors. Only after failing to resolve his debts on his own, did Applicant file for bankruptcy. His lender then finally agreed to an equitable resolution of the mortgage-related debt. Applicant resolved the mortgage-related debt for his former home in 2015 – several months before the SOR was issued. He then responsibly addressed the other personal consumer debt listed on the SOR. He presented documentation to substantiate his debt resolution efforts. The manner in which Applicant responsibly addressed and managed his past personal financial problems, notwithstanding the old business-related debt listed in 1.g, tends to show that he can be counted on to manage his security obligations in a responsible manner. AG 20(a) – 20(d) apply. Overall, the record evidence leaves me with no questions or doubts about Applicant's present eligibility for a security clearance.¹¹

¹⁰ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

¹¹ In reaching this conclusion, I also considered the favorable whole-person factors raised by the record evidence, including the candor Applicant showed in reporting the financial information on his security

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

Conclusion

In light of the record evidence, it is 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 granted.

Francisco Mendez
Administrative Judge

clearance application. He continued to be upfront about his finances throughout the security clearance process, as evidenced by his decision to voluntarily provide with his Answer his IRS tax account transcript, which, at the time, would have been for the most recent tax year. See *generally* AG ¶ 2