



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03708

Appearances

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se*

05/10/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He failed to present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

On April 28, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his financial circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR on May 12, 2016, and requested a hearing to establish his eligibility for continued access to classified information.

A hearing was scheduled for February 6, 2018, a date mutually agreed to by the parties. On that date, Applicant appeared and asked for a continuance, so he could retain

¹ The DOD CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

counsel. I granted Applicant a 30-day continuance, rescheduling the hearing for March 7, 2018.² Applicant appeared at the March 7, 2018, hearing, but was not represented by counsel.³ Applicant said he had consulted with a lawyer but did not retain the lawyer and was comfortable representing himself.⁴ Applicant testified at the hearing, and the exhibits offered by the parties at the hearing were admitted into the administrative record without objection. (Government Exhibits (GE) 1 – 9; Applicant’s Exhibit A (AE A).) At the request of Applicant, without objection, the record remained open until April 4, 2018. At Applicant’s request, that date was subsequently extended until April 18, 2018, without objection. Post-hearing, Applicant timely submitted five documents that I have marked AE B through F, and which are admitted without objection.⁵

Procedural Issues

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.”⁶ 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, 2017.⁷ 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).⁸ DOD CAF adjudicators reviewed this case using the previous version of the adjudicative guidelines, dated September 1, 2006, which were in effect at the time. My decision and formal Findings under the revised Guideline F would not be different under the 2006 Guideline F.

In his discovery letter to Applicant dated December 23, 2016, Department Counsel enclosed an Amended SOR to delete one alleged debt from the original SOR and to add

² I received the transcript (Feb. Tr.) for this hearing on February 13, 2018. Tr. 6, 12. The original hearing had been set for January 22, 2018, but had to be canceled due to a Government shutdown. Feb. Tr. 10.

³ I received the transcript of the March hearing (Mar. Tr.) on March 15, 2018.

⁴ Mar. Tr. 6.

⁵ Due to technical email issues, I did not receive all of Applicant’s post-hearing submissions until May 7, 2018.

⁶ SEAD-4, ¶ B, *Purpose*.

⁷ SEAD-4, ¶ C, *Applicability*.

⁸ 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.”)

five new alleged debts. At the March hearing, Department Counsel moved to amend the SOR, which motion I granted without objection.⁹

Findings of Fact

Applicant is 47 years old and a high school graduate. He is separated from his wife (since May 2012). Applicant has four children, a son (9) who lives with Applicant's wife, a son (27) who is on his own, a daughter (21) who lives with Applicant, attends community college, and works part-time, and a daughter (4) he had with his cohabitant. Applicant pays child support of between \$700 and \$760 a month for his youngest son. Since September 2012, he has worked for defense contractors.¹⁰

The Amended SOR alleged 15 delinquent debts totaling \$134,560. Of that amount, about \$50,000 are state and federal tax liens, and about \$46,000 is a charged-off second mortgage.¹¹ Applicant admitted the allegations, except for the debts listed in SOR ¶¶ 1.e, 1.f, 1.i, and 1.j. In June 2013 during the background investigation, Applicant was questioned about several delinquent debts. At that time, he explained that he was working on setting up payment plans for several of the delinquent accounts.¹²

From 2004 until December 2011, Applicant worked for Employer A, which paid "good money." In December 2011, he was laid off when the government contract expired. He was unemployed from December 2011 until March 2012, when he took a job with Employer B, a job that paid about \$45,000 a year less than he had previously earned at Employer A. He worked for Employer B for about a year, until September 2012. At that point, he took a job with Employer C, which paid about \$20,000 to \$30,000 less per year than he earned at Employer A. Applicant worked for Employer C until about September 2013. Since September 2013, with his current employer, Applicant has managed to come up to the level of about \$70,000 to \$75,000 per year (in 2017). He has never returned to the salary level he made at Employer A.¹³

The period of unemployment and the significant reduction in Applicant's take-home pay when he regained employment hurt him financially. He is able to stay current with his expenses, but he is unable to pay off his delinquent debts. Applicant estimates that he has about \$800 a month remaining to apply to his delinquent debts. He supports his cohabitant and his two daughters. His cohabitant makes about \$27,000 per year, and she buys groceries, pays a couple of small bills, and contributes to the costs of utilities.¹⁴

⁹ Mar. Tr. 7-8. The Amended SOR withdrew SOR ¶ 1.a and added SOR ¶¶ 1.l through 1.p. Mar. Tr. 10-11.

¹⁰ GE 1; GE 3; Mar. Tr. 29-32, 46-48.

¹¹ SOR ¶¶ 1.b through 1.p.

¹² GE 3, pp. 2-4.

¹³ Mar. Tr. 22-29.

¹⁴ Mar. Tr. 29, 44-45.

Applicant testified about his SOR debts. SOR ¶¶ 1.b, c, and d are three credit union accounts with the same creditor (totaling \$24,281). He is in negotiations with this creditor to set up a payment plan. Post-hearing, Applicant submitted an April 10, 2018, Payment Reminder from the creditor identified in SOR ¶ 1.b.¹⁵ Applicant provided no documentation that he has made any payments on these accounts.

Applicant testified that he could not identify the debt alleged in SOR ¶ 1.e (\$2,983). In his post-hearing submission, however, he produced an invoice from a collection agency for this account placed by the original creditor, which was a wireless provider.¹⁶ Applicant did not provide any documentation showing any payments or a plan for payment.

Applicant testified that he planned to contact the creditor of the debt alleged in SOR ¶ 1.f (\$800) to make payment arrangements. In his post-hearing submission, Applicant produced a document dated March 28, 2018, from a collection agency for this account offering to settle the debt for \$560.¹⁷ Applicant provided no documentary evidence that he has settled this account.

Applicant testified that he planned to contact the creditors identified in SOR ¶¶ 1.g (\$326) and 1.h (a charge-off with no amount stated). His recollection was that he had paid those debts and intended to try and get a receipt.¹⁸ Post-hearing, Applicant provided no documentation that this account had been paid in whole or in part.

Applicant testified about his federal and state income tax liens identified in SOR ¶¶ 1.i and 1.j (\$3,238 and \$24,503 federal) and 1.l and 1.m (\$13,602 and 9,036 state). He said that he retained a taxpayer assistance company two or three years ago to deal with his tax issues. Applicant took out an \$8,000 loan from a lender that works with the taxpayer assistance company to settle his tax liens. Applicant is paying off that loan. That company also submitted Applicant's income tax returns through tax year 2016. His past income tax returns are up to date. Applicant plans on filing his income tax returns for 2017.¹⁹ Applicant did not provide any documentation establishing his record of loan payments. Post-hearing, Applicant provided a document dated March 29, 2018, from the taxpayer assistance company conveying a settlement offer from the state taxing authority based on a \$2,000 down payment and \$350 paid per month thereafter.²⁰ Applicant produced no documents showing that he had accepted that offer.

¹⁵ Mar. Tr. 32-33; AE F.

¹⁶ Mar. Tr. 33-34; AE C.

¹⁷ Mar. Tr. 35; AE B.

¹⁸ Mar. Tr. 35-36.

¹⁹ Mar. Tr. 36-42; AE A (March 5, 2018, email from the taxpayer assistance company confirming that Applicant has hired it to resolve his income tax issues).

²⁰ AE E.

Applicant testified that the debt alleged in SOR ¶ 1.k (\$45,706) is a second mortgage that he used to pay off a vehicle loan and to buy his house. He is trying to find out who holds that loan, since it has been sold two or three times since the original creditor. When he learns that, Applicant will negotiate with the current creditor.²¹ Post-hearing, Applicant produced a document dated March 30, 2018, from the agent for the mortgage company proposing a monthly payment schedule with the first installment being due in April 2018, with five monthly installments thereafter to be renewed until the balance is paid.²² Applicant produced no documents to show that he made the initial payment.

Applicant testified about the debt alleged in SOR ¶ 1.n (\$477). He plans to contact the creditor to set up a payment plan.²³

Applicant testified that the debt alleged in SOR ¶ 1.o (\$2,567) is for wireless service. He has had conversations with the collection agent, because he disputes the amount.²⁴ Applicant produced no documents evidencing that dispute.

The debt alleged in SOR ¶ 1.p. (\$7,041) is for child support. Applicant testified that it was “currently taken care of . . . under an agreement.”²⁵ Applicant produced no written agreement or records of payments made under a child support agreement.

In sum, Applicant’s testimony and his post-hearing submissions did not establish that any of the SOR debts have been paid, are being paid, or are otherwise resolved.

Law and 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).

²¹ Mar. Tr. 40.

²² AE D.

²³ Mar. Tr. 42-43.

²⁴ Mar. Tr. 43-44.

²⁵ Mar. Tr. 44.

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.

Discussion

Guideline F, Financial Considerations

The SOR alleges that Applicant has a number of delinquent 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.

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.²⁶

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 ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or 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 (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(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.

²⁶ 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.²⁷ Here, Applicant's security clearance eligibility was called into question by his past and continuing financial problems, primarily his failure to satisfy state and federal tax liens and to resolve a charged off second mortgage. I conclude that disqualifying conditions AG ¶¶ 19(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

Applicant's delinquent debts are neither infrequent, nor did they happen so long ago. His debts are currently delinquent. AG ¶ 20(a) does not apply.

The record is straightforward that Applicant's unexpected loss of his well-paying job with Employer A in December 2011 and his period of unemployment until March 2012 caused him serious financial problems. Those problems were aggravated when he could not find a job whose pay was even close to what Applicant earned with Employer A. To this day, he still has not reached the level of compensation he made with Employer A. Those circumstances were largely beyond Applicant's control, as contemplated by mitigating condition AG ¶ 20(b). The question is whether Applicant acted responsibly in light of those adverse circumstances.

As far back as Applicant's June 2013 background interview, almost five years ago, Applicant knew that his financial record was being scrutinized in connection with his May 2013 security clearance application. During that interview, he stated that he was setting up payment plans. When the original SOR was issued in April 2016, Applicant clearly was reminded that his financial problems were jeopardizing his security clearance. He was sent an Amended SOR in December 2016. During his March 7, 2018, hearing, Applicant was saying again that he **would be** setting up payment plans. Applicant knew for years that his financial problems presented an obstacle to having his clearance renewed. But he took no concrete steps of any significance to address them.

An applicant is not required to show that every debt in the SOR has been paid. Rather, an applicant is required to demonstrate that he or she has "established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan."²⁸ In this case, Applicant came into the hearing with almost no plan to resolve his financial problems. Indeed, he developed most of his plan during the post-hearing period when the record was left open. And, there is no evidence that he has taken significant action to implement his plan. I find that Applicant did not act responsibly under the adverse circumstances he confronted. AG ¶ 20(b) does not fully apply to mitigate Applicant's delinquent debts.

²⁷ See generally ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

²⁸ ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). See also ISCR Case No. 14-00504 at 3 (Aug. 4, 2014).

To his credit, Applicant did retain a taxpayer assistance company to counsel him on how to resolve his tax issues. As of the hearing, he was current on his tax filings. He has not, however, resolved the tax liens. AG ¶¶ 20(c) and 20(g) partially apply but do not wholly mitigate his tax issues. After the hearing, Applicant began reaching out to some of his creditors to resolve his delinquencies. He has not, however, established any track record of efforts to repay overdue creditors or otherwise resolve his debts. AG ¶ 20(d) does not apply.²⁹

The record raises doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.³⁰ Accordingly, I conclude that Applicant did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the Amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F (Financial Considerations):	Against Applicant
Subparagraph 1.a.:	Withdrawn
Subparagraphs 1.b – 1.p:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge

²⁹ See, e.g., ISCR Case No. 15-01652 at 2 (App. Bd. Jul. 7, 2017) (clearance denied where applicant had not shown a track record of financial responsibility).

³⁰ AG ¶ 2(a)(1)-(9).