



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08729
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Department Counsel
For Applicant: *Pro se*

11/06/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. Applicant attributes his current financial problems to the high cost he incurred in litigating a child custody dispute after he was accused of inappropriately touching his minor daughter. He has repeatedly promised to address and resolve his past-due debts, but presented no documentation showing he has taken corrective action. Clearance is denied.

Statement of the Case

On June 10, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Specifically, the SOR alleges nine charged off or collection accounts. Applicant answered the SOR on August 4, 2016, admitting six of the SOR debts (1.a, 1.c, 1.e, 1.f, 1.g, and 1.i). Combined, these six delinquent debts total about \$50,000.

Applicant claimed in his Answer to be in the process of contacting a credit counseling firm to help him address his financial situation. He submitted no documentation showing he had received financial counseling or that he had addressed any of his SOR debts, including a relatively minor \$150 collection account referenced in SOR 1.e. He had previously reported this debt on his May 2015 security clearance application and claimed then to be in the process of resolving the debt.

On September 26, 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 ten exhibits (Items 1 – 10) that the Government offers for admission into the record. Applicant received the FORM and accompanying exhibits on September 30, 2016. (Appellate Exhibit I.) He was given 30 days to submit a response to the FORM and raise an objection(s) to the evidence offered by the Government. He did not submit a response, raise an objection, or present any evidence showing that he had taken any action to address the past-due debts alleged in the SOR.

On November 2, 2017, I was assigned the case for decision. No additional matters were submitted by either party for my consideration. Without objection, Items 1 – 10 are admitted into the record.

Findings of Fact

Applicant, 43, is employed by a defense contractor. His security clearance application reflects that he was hired by his current employer in September 2012. He has been gainfully employed as a federal contractor since at least 2004. He was unemployed for a month in 2012, after being fired by a former employer for poor job performance. Current co-workers, including a U.S. Navy captain, submitted letters noting Applicant's favorable work performance and expressing their belief that he is a valued team member. Each of these persons recommend that Applicant be allowed to retain a security clearance, which he initially received in about 2006.

Applicant attributes his financial problems to divorce, protracted and expensive child custody litigation, and a substantial increase in his court-ordered child support payments. In 2011, after Applicant and his wife separated, his former marital home was foreclosed. Applicant and his wife divorced in August 2012.

Applicant and his ex-wife shared custody of their now eight-year-old daughter until March 2014, when his wife filed a petition to modify the court's child custody order. Applicant's ex-wife requested sole custody because Applicant had allegedly inappropriately touched his daughter's private parts. A protective order was issued and Applicant was required to receive a psychosexual evaluation. He claims that the evaluator "inserted things into [the] report that [he] did not say" and "gave an inaccurate accounting of what [they] discussed" during the evaluation.¹

Applicant reports going through other psychological evaluations during the course of the custody litigation. From November 2014 to December 2014, Applicant received inpatient treatment. This inpatient treatment occurred after Applicant sought mental health counseling required by a magistrate to facilitate reunification efforts. In February 2015, Applicant's ex-wife was awarded sole custody by the court. The court also increased the monthly child support amount Applicant is required to pay from \$538 to \$1,368.

¹ Item 10 at 5. This psychological evaluation report was not provided by either party. Also, no investigative reports, court records, medical records, or other relevant documents related to the serious allegations of child sexual abuse were submitted. The information regarding this serious allegation are taken from Applicant's security clearance application (Item 5) and the summary of the security clearance interview that was prepared by the security clearance investigator (Item 10).

Applicant denies the allegations that he inappropriately touched his daughter and claims his ex-wife falsely made the accusation to gain custody of their daughter, because she wanted their daughter to go to private school. He self-reported the information regarding the accusation to his facility security officer (FSO).²

In May 2015, Applicant submitted a security clearance application. In response to relevant questions, he reported a number of delinquent accounts, including the \$150 collection account and student loan debt in collection status referenced in SOR 1.e and 1.g, respectively. Applicant became aware of the delinquency involving the student loan debt in 2013. The outstanding balance on the student loan debt has grown to \$33,500.

Applicant promised during his September 2015 security clearance interview that he was going to address his past-due debts, including the \$150 collection account and his delinquent student loan account. He again promised in his August 2016 Answer that he was going to take action to address the six SOR debts that he admits. These six debts total about \$50,000. He presented no documentation showing what, if any, efforts he has made to address and resolve these six debts.

The three SOR debts that Applicant denies in his Answer, two collection accounts (1.b and 1.h) and his delinquent child support account (1.d), are listed on Applicant's credit reports.³ Applicant claims that his child support payments are automatically deducted from his pay and he is current on this obligation. He provided no supporting documentation, such as a current statement from the child support enforcement agency.

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).⁴

"[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

² Item 5 at 34-35; Item 10 at 5-6; Item 9.

³ Item 6 at 2, number 3.1 (SOR 1.b - \$2,700 collection account for attorney fees) and 8.1 (SOR 1.d - \$415 child support collection account). Item 7 at 6 (SOR 1.h - \$332 collection account).

⁴ Nonetheless, I considered the previous version of the guidelines, which were in effect when the SOR was issued, and my ultimate conclusion would have been the same.

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 adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.⁵

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.

⁵ 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 put on 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).

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.⁶

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise sensitive 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 sensitive information.⁷

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

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

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 ¶ 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 person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated 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.

⁶ AG ¶ 18.

⁷ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

Applicants are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their conduct and 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 all prospective and active clearance holders.⁸

Here, Applicant failed to meet his burden of proof and persuasion. His current financial problems appear to be, in part, attributable to the financial fallout from the dissolution of his former marriage. However, based on the limited evidentiary record, I cannot find that the high financial expenses he incurred in relation to the recent child custody litigation was a matter largely beyond his control. Specifically, insufficient evidence was provided to find that Applicant was at fault, i.e., that he sexually assaulted his daughter, or was falsely accused of a heinous act with his minor daughter by his ex-wife as a means to gain sole custody of their daughter.⁹ Nonetheless, what is clear is that Applicant has yet to take responsible action to address his financial problems and take control of his finances.

Of note, Applicant has been gainfully employed since 2004, except for a month of unemployment in 2012. He was hired by his current employer in September 2012, and throughout the security clearance process promised to take action to address his past-due debts, including a relatively minor \$150 collection account. He provided no documentation showing what action, if any, he has taken to address and resolve his past-due debts or regarding the current state of his finances. He also presented no evidence that would undercut the reliability of the evidence submitted by the Government to establish the SOR debts¹⁰ or to substantiate the basis of his dispute regarding any of the SOR debts. See *generally* ISCR Case No. 15-02585 at 2 (App. Bd. Dec. 20, 2016) (“It is reasonable for Judges to expect applicants to present documentation about the satisfaction of individual debts.”)¹¹

Accordingly, based on the record evidence, I find that AG ¶¶ 19(a) – 19(c) apply. None of the mitigating conditions fully apply. Security concerns raised by Applicant’s financial situation remain.¹²

⁸ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁹ This specific finding does not prevent the Government from gathering and presenting evidence regarding the serious allegations of child sexual abuse in a reapplication-type scenario. See *generally* ISCR Case No. 14-03986 (App. Bd. Apr. 19, 2017).

¹⁰ Notwithstanding recent reports that a major credit reporting agency was hacked, in DOHA proceedings adverse information contained in a credit report is sufficient to prove a disputed SOR allegation. The burden then shifts to an applicant to rebut or mitigate the negative security implications raised by such evidence. ISCR Case No. 14-03910 at 2 (App. Bd. June 24, 2015); ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011).

¹¹ See *also* ISCR Case No. 15-05478 (App. Bd. Oct. 2, 2017) (judge erred in accepting applicant’s self-serving assertions that he had resolved financial issues without corroborating documentary evidence).

¹² In reaching this adverse decision, I considered that Applicant self-reported the information about the child sex abuse allegations to his FSO and the favorable reference letters attached to his Answer. However, these favorable whole-person matters are insufficient, whether considered individually or collectively with

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.i: Against 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

the other favorable record evidence, to mitigate the security concerns at issue. *See generally* AG ¶ 2. I also considered the exceptions listed in SEAD-4, Appendix C, but none are warranted in this case.