



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



In the matter of:

REDACTED

Applicant for Security Clearance

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ISCR Case No. 16-02274

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial issues. He began experiencing financial trouble shortly after he and his wife of 28 years divorced. He started taking action to address his past-due debts several years ago. He presented substantial documentation showing that he has resolved the majority of the debts that he incurred following the divorce. His present financial situation does not raise a concern about his security clearance eligibility. Clearance is granted.

Statement of the Case

On September 16, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under the financial considerations guideline. Applicant answered the SOR and requested a hearing.

By agreement of the parties, a hearing was convened on November 16, 2017. Applicant testified and the exhibits offered by the parties were admitted into the record without objection.¹ The transcript was received on November 27, 2017.

¹ Government's Exhibits 1 – 5.

Findings of Fact

Applicant, 52, holds a master's degree and served in the U.S. military for over 25 years. He had direct access to highly sensitive U.S. information while in the military. He closely guarded the information. He retired from the military in 2010, and since then has worked as a federal contractor. He was unemployed from January 2015 to April 2015, and was then hired by his current employer. He submitted a security clearance application in 2015 in connection with his current job. He reported a number of financial problems on the application, including the foreclosure of his home. Applicant's financial problems started shortly after he and his wife of 28 years divorced.²

Applicant addressed and resolved the majority of the debts that he incurred following his divorce. He presented documentation showing that he resolved the debts referenced in SOR 1.a through 1.c, totaling approximately \$650,000. He also presented documentation and other credible evidence showing that he paid or is paying other debts not listed on the SOR that he incurred after the divorce, including about \$50,000 in credit card debt. The only SOR debt that Applicant has yet to address is the \$700 account referenced in SOR 1.d. This debt is not listed on Applicant's 2016 or 2017 credit reports. Applicant pays his current financial obligations in a timely manner and, though not perfect, his current financial situation is good.³

Applicant and his ex-wife married in 1989, and they have three children. They purchased their first home in 1993, and never missed or were late with their mortgage payments. They sold the home in 2002 and used the sale proceeds as a down payment for their second home, which they bought for \$360,000.⁴

Applicant and his ex-wife separated in 2006. Applicant wanted to keep the home to provide some stability for his then young children. His wife, on the other hand, wanted to sell the home and split the proceeds. At the time, Applicant's children were between the ages of 11 and 17. His only source of income was his active duty military pay. He was an E-7. He applied for and was approved by a major U.S. bank for a mortgage totaling over \$550,000, which would allow him to buy out his wife and keep the home. He gave his wife approximately \$100,000, and the divorce was finalized in 2007.

Applicant was awarded custody of the children. Although Applicant and his wife remain friendly, he never received child support from her. Applicant's youngest child is currently serving in the U.S. military, while his oldest two children graduated college and are pursuing professional careers.⁵

About a year after the divorce, Applicant started experiencing financial trouble. The mortgage he agreed to in order to keep the home was an adjustable rate instrument. After

² Tr. 10-12, 20-24, 51-52; Answer; Exhibits 1, 5; Exhibits F, H.

³ Tr. 32-39; Answer; Exhibits 1 – 3, 5; Exhibits A – D, I.

⁴ Tr. 20-23, 48-49; Exhibit 1.

⁵ Tr. 11-12, 20-39, 45-47; Exhibit 1, 5; Exhibits F, H.

the monthly mortgage payments increased, Applicant was unable to pay the mortgage and his family's other recurring expenses on his salary alone. He started using credit cards to pay his bills.⁶

Applicant used credit cards to manage his finances until about 2011. At that point, he retained the services of an online debt repair firm. The firm reached out to the five creditors holding Applicant's credit card debt. Three of the creditors, who held a combined total of about \$50,000 in credit card debt, agreed to settlements and payment arrangements. Applicant paid his debts to these three creditors. The fourth creditor forgave Applicant's credit card debt. The fifth creditor, which also held Applicant's mortgage account, would not agree to a payment plan. Instead, the creditor garnished Applicant's wages. After a year, this fifth credit card debt was paid. The garnishment, however, left Applicant unable to pay his mortgage and he defaulted on the home loan.⁷

Applicant tried to remedy his delinquent mortgage account by applying for a modification. He submitted the necessary paperwork on at least two separate occasions, but the lender claimed never to have received it or lost the paperwork. Applicant then tried to sell the property. He received a short-sale offer of \$460,000, but the bank rejected the offer. Applicant eventually agreed to voluntarily leave the home and allow the bank to foreclose on the property. The bank sent him a 1099-C, reflecting that they canceled the mortgage debt. The 1099-C also reflects that as of 2015, when Applicant's former home was sold at a foreclosure auction, the fair market value of the property was \$281,000.⁸

Applicant's current annual salary is approximately \$95,000. He also receives about \$3,000 a month in military retirement income. He pays about \$1,600 a month for a small apartment, which is about half the amount of his old mortgage payments. He uses an online calendar to timely pay his recurring debts. A recent credit report reflects that Applicant has not incurred new delinquent debt. It also reflects a favorable credit score.⁹

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

⁶ Tr. 11-12, 23-39, 47-49.

⁷ Tr. 12, 24-39; Answer; Exhibit 5; Exhibits C, D.

⁸ Tr. 24-39, 49-50; Answer; Exhibit 5; Exhibits A, D.

⁹ Tr. 39-46; Exhibit D.

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 conduct all hearings in a timely and orderly manner. Judges must 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, ¶ E3.1.32.1.¹⁰

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

¹⁰ 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).

degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.¹¹

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 financial issues cast doubt upon a person's judgment, self-control, and other qualities that are essential to protecting classified information.¹²

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

AG ¶ 20(a): the behavior happened so long ago . . . 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 from a legitimate and credible source . . . 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 a debt collection process. Rather, an administrative judge examines the way an applicant handles his or her personal financial

¹¹ AG ¶ 18.

¹² ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

obligations to assess how they may handle their security obligations.¹³ 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.¹⁴

Here, Applicant's security clearance eligibility was called into question by his inability to pay his mortgage and other debts. His past financial problems were primarily attributable to certain matters largely beyond his control, notably, divorce. He financially overextended himself trying to provide a stable home for his children.

Applicant stopped living on unsustainable credit card debt and started taking action to remedy his troubled financial situation in approximately 2011. He retained the services of a debt repair firm. With the firm's help, Applicant settled and satisfied about \$50,000 of credit card debt. He then attempted to address and resolve his mortgage, but his efforts were repeatedly stymied by the creditor and a deflated housing market. Nonetheless, as of the close of the record, Applicant was able to resolve the vast majority of the debts he incurred following the dissolution of his 28 year marriage.

Applicant provided substantial documentation showing that he addressed and resolved all the SOR debts, except a relatively minor \$700 debt. Although he might benefit from counseling to better manage his finances, his current financial situation does not raise a security concern. In short, Applicant's past financial problems do not cast doubt on his current judgment, reliability, and ability and willingness to handle and safeguard classified information. AG ¶¶ 20(a) through 20(d) apply, in full or in part, and mitigate the security concerns at issue.

In reaching this conclusion, I also considered Applicant's military service, highly favorable security record, the honesty and candor he exhibited during the security clearance process, and positive character traits.¹⁵ Overall, the record evidence leaves me with no questions or doubts about extending Applicant's eligibility for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive, ¶ E3.1.25, are:

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

¹³ See *generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

¹⁴ 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).

¹⁵ See AG ¶ 2 (whole-person concept). See *also* SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).

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