



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 16-02852
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J Connelly, Department Counsel
For Applicant: *Pro se*

10/20/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. He defaulted on his student loan obligations and, despite earning a six-figure salary, his student loans remain in collection. Clearance is denied.

Statement of the Case

On April 8, 2015, Applicant submitted a security clearance application in connection with his employment in the defense industry. In response to relevant questions, Applicant reported on the application that he had a relatively minor delinquent credit card account (\$272). He indicated that he was in the process of resolving this debt. During the ensuing background investigation, Applicant was confronted by an investigator with information indicating that his student loans were seriously past due. He told the investigator that he was in contact with the company servicing his student loans and was in the process of resolving the situation. (Items 2, 3.)

On September 26, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Specifically, the SOR lists six student loan accounts in collection status totaling over \$30,000. The SOR also alleges a past-due credit card account and the minor credit card account Applicant listed on his application (SOR 1.h).

On November 21, 2016, Applicant answered the SOR. He admits all the SOR allegations. With his Answer, Applicant submitted documentation that reflects he has nine outstanding student loan accounts totaling over \$50,000. (Item 2.)

On December 29, 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 six exhibits (Items 1 – 6) that the Government offers for admission into the record. Applicant responded to the FORM on January 31, 2016. With his Response, Applicant submitted four exhibits (Exhibits A – D).¹ Without objection, Items 1 – 6, Applicant's Response, and Exhibits A – D are admitted into the record.

On October 1, 2017, after the Hearing Office received confirmation that Applicant remained sponsored for a clearance, I was assigned the case for decision. I reopened the record to give the parties the opportunity to submit updated information. (Appellate Exhibit I.) Applicant timely submitted seven additional exhibits (Exhibits E – K).² Without objection, Exhibits E – K are admitted into the record.

Findings of Fact

Applicant, 40, was born in a country in the Horn of Africa. He became a naturalized U.S. citizen in 2012. He holds an associate's degree in business and a bachelor's degree in economics. He is currently working abroad as a linguist in support of the U.S. military. Applicant has received awards for his work, and a U.S. military member who served with him in the overseas location provided a favorable recommendation letter. Applicant is also a U.S. military reservist. He was first granted a security clearance in approximately 2013.³

Applicant was hired as a federal contractor in April 2015. Before then, he primarily worked in low-paying jobs in the U.S. retail sector. He started his overseas contract assignment as a linguist in support of the U.S. military in September 2016. An undated offer letter from Applicant's current employer for Applicant's current position indicates that he would receive an annual salary of approximately \$115,000. A personal financial statement from April 2016 reflects that, after paying his monthly expenses and debts, Applicant has a monthly shortfall of over \$3,500.⁴

¹ These exhibits were not pre-marked or organized. For ease of reference in case of appellate review, Exhibits A is a reference letter; Exhibit B is an undated student loan balance statement reflecting a \$53,000 balance, which includes \$11,000 in fees and costs; Exhibit C consists of bank statements from 2015 and 2016 reflecting six payments from December 2016 through January 2017; Exhibit D reflects a consolidation loan application signed by Applicant on December 27, 2016.

² These exhibits were also not pre-marked or organized. Exhibits E, Applicant's email from September 30, 2017; Exhibit F, another email from September 30th confirming a student loan payment; Exhibit G, student loan payment history; Exhibit H, offer letter from employer; Exhibit I, DD 214; Exhibit J, certificates of completion and awards; Exhibit K, second copy of Exhibit A.

³ Items 2, 3; Exhibits A, H – J.

⁴ Answer, attached *Letter of Authorization*; Items 2, 6; Exhibit H.

Applicant defaulted on his student loans. He claims to have consolidated and rehabilitated his student loans before the SOR was issued, but did not provide documentation to corroborate his claims.⁵ The records Applicant submitted reflect that he has made irregular and inconsistent student loan payments since 2015.⁶ He did not submit a copy of a repayment plan for his student loans, nor documentation showing that he is abiding by the terms of such a plan. Applicant also did not submit proof that he resolved the two relatively minor past-due credit card accounts referenced in the SOR (1.g and 1.h). One of these debts, SOR 1.h, was the debt that Applicant reported on his April 2015 security clearance application and claimed to be addressing.

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).⁷

“[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.

⁵ Item 1; Exhibit E.

⁶ Exhibits C, F, and G reflect the following student loan payments: July 2015 (\$210); August 2015 (\$192); September 2015 (\$253); October 2015 (\$230); November 2015 (\$92); December 2015 (\$192); December 2016 (\$585); January 2017 (\$585); March 2017 (\$354); July 2017 (2 payments totaling \$663); August 2017 (2 payments totaling \$810); September 2017 (\$300); October 2017 (\$355).

⁷ 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.

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, ¶ E3.1.32.1.⁸

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.

Analysis

Guideline F, Financial Considerations

Applicant’s history of financial problems raise a security concern, which is explained at AG ¶ 18:

Failure to . . . 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. . . .

The concern here 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

⁸ 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).

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.⁹

In assessing Applicant's case, I considered all pertinent disqualifying and mitigating conditions, 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; and

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

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.¹⁰

Here, Applicant failed to meet his burden of proof and persuasion. His past financial problems may be attributable to some matters largely beyond his control, such as the inability to obtain a well-paying job after earning his undergraduate degree because of the recent U.S. economic recession. However, he has been gainfully employed as a federal contractor since April 2015, and has been earning a six-figure salary since

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

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

approximately September 2016. Since 2015, Applicant has only made irregular and inconsistent student loan payments and the record reflects that they remain in collection status.¹¹ He did not provide any documentation that he addressed and resolved the relatively minor collection account referenced in SOR 1.h, which he claimed in his April 2015 security clearance application to be in the process of resolving. See ISCR Case No. 14-03069 (App. Bd. July 30, 2015) (“Promises to resolve debts in the future are not a substitute for a track record of debt resolution.”)

Accordingly, I find that AG ¶¶ 19(a) – 19(c) apply. None of the mitigating conditions fully apply. Applicant may in the future be able to (re-)establish his eligibility for a security clearance. At present, however, security concerns raised by his problematic financial past remain.¹²

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.h:	Against Applicant

¹¹ In order to mitigate security concerns raised by the accumulation of delinquent debt, an applicant is required to show a “meaningful track record” of debt repayment. ISCR Case No. 07-06482 (App. Bd. May 21, 2008). Applicant’s inconsistent and irregular payments over the past two years, some of which were timed at critical junctures in the current security clearance review, are not sufficient to meet the high level of proof required in these cases.

¹² In reaching this adverse decision, I considered Applicant’s military service and his overseas service as a contractor. However, these favorable whole-person matters are insufficient, whether considered individually or collectively with the other favorable record evidence, to mitigate the security concerns at issue. See *generally* AG ¶ 2. See also SEAD-4, ¶ E.4; Directive, ¶ 6.3.

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.¹³

Francisco Mendez
Administrative Judge

¹³ In light of Applicant's work performance, unique language skills, and the obvious need of the military for persons with such skills, I also considered the exceptions listed in SEAD-4, Appendix C. Arguably, a security clearance could be conditioned in this case on Applicant providing proof that: (a) he has rehabilitated his student loans, (b) he is repaying his debts, and (c) he remain financially stable. However, the applicability of this Appendix to contractor cases adjudicated under the Directive remains a question. Furthermore, even if applicable, no implementation guidance has yet been issued. Thus, it would be inappropriate for a judge to rule on this issue at this time.