



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 16-03181
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. Clearance is denied.

Statement of the Case

On December 2, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Applicant answered the SOR and requested a hearing.

On January 16, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing and the exhibits offered by the parties were admitted into the administrative record without objection. (Government Exhibits 1 and 2; Applicant's Exhibits A and B.) Applicant's request to submit evidence post-hearing was granted. He timely submitted Exhibits C – G, which were also admitted into the record. The transcript (Tr.) of the hearing was received on January 23, 2018.¹

¹ Scheduling correspondence, the case management order, and other administrative documents, if any, were marked and are attached to the record as Appellate Exhibit I. Post-hearing correspondence is attached as Appellate Exhibit II.

Findings of Fact

Applicant, 61, is employed as a federal contractor. He was hired by his current employer in approximately February 2013 as a temporary employee. In approximately September 2013, his employer offered him a full-time time position. Applicant submitted a security clearance for his job in March 2015. In response to questions about his financial history, Applicant reported he had a number of delinquent debts, notably, student loans totaling approximately \$16,000 and past-due state income taxes for the 2008 tax year totaling about \$5,200. The December 2016 SOR lists these two debts as a security concern. As of the January 16, 2018 hearing, Applicant had not paid the debts nor made payment arrangements with his creditors. Both debts remain unresolved.

Applicant explained that his financial problems began after he left a previous job to work on a book. When Applicant re-entered the workforce in 2008, he was unable to find full-time, gainful employment in wake of the recession. He primarily worked for temporary job placement agencies from 2008 to 2013, when he was hired by his current employer. (Tr. 17-18, 21)

Applicant earns an annual salary of approximately \$44,000, while his wife earns about \$61,000. (Tr. 18-19) Applicant testified that after many years of less than full-time employment, his financial situation remains poor. He has not obtained financial or credit counseling. He provided a personal financial statement (PFS) showing that, after paying recurring expenses, including repaying a \$4,000 personal loan that he obtained from his bank in 2016, he has approximately \$660 left over each month. The PFS also reflects bank savings totaling \$130. (Exhibits C, E)

As for the student loan debt, Applicant explained that he initially incurred the debt in the early 1990s for his education. He started repaying his student loans after graduating from school, but sometime in the early to mid-2000s he began receiving notices that he had defaulted on his student loans. He was aware of the student loan debt when he decided to quit his former job in 2005 or 2006 to write a book. At the time, Applicant states his family's financial situation was good. He did not anticipate an issue getting a job after taking a year or so off to work on his book.

In November 2012, Applicant received a collection notice about his student loans, informing him that he owed a total of about \$16,000. The notice also included an offer of assistance in establishing a repayment plan. Over the years, Applicant has entered into repayment agreements to resolve his student loan debt, but always stopped making the required monthly payments. A payment history for his student loans reflects that he has made irregular payments on his accounts through the years, with a last payment on the accounts occurring in August 2013. (Tr. 14-18, 23-31)

Applicant stated in his March 2015 security clearance application that he would enter into a 10-month repayment agreement to rehabilitate his student loans. (Exhibit 1 at 34-35) He did not follow through with this promise and his student loans remain in default status. (Exhibit B) Shortly before the hearing, Applicant contacted the creditor holding his student loans and submitted the necessary paperwork to enter into a new

repayment plan. (Tr. 16-17) He plans on bringing the student loans out of default by the end of 2018. (Exhibit G)

As for the state tax debt, Applicant explained that in 2008 his former employer did not deduct state income taxes from his wages. He was unable to pay the \$5,200 that he owed in state income taxes. The state placed a tax lien against him in 2011, but it has since been removed. (Exhibit 1 at 33, 35) Applicant states that he is having his employer take out an additional \$200 in taxes to pay down this debt. (Tr. 20-21, 28-29; Exhibit G) He did not provide his earning statement or other independent documentary evidence to corroborate his claim. In May 2017, Applicant's \$2,300 federal tax refund was intercepted to offset his state tax debt. (Exhibit A) Applicant is unaware of the balance remaining for the state tax debt, but is "certain that the remaining balance will be paid off in the coming months, once [his] 2017 tax returns have been filed." (Exhibit G)

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 adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.²

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. (AG ¶ 18.)

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

In assessing Applicant's case, I considered the applicable disqualifying and mitigating conditions, including:

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

² 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 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).

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(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.

Individuals applying for a security clearance are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their 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 those granted access to classified information.³ Applicant failed to meet his burden of proof and persuasion.

Applicant's financial problems are, in part, attributable to matters beyond his control. Specifically, unstable employment and underemployment for a long stretch of time. However, his decision to quit his former job and, in the process, disregard his student loan debt raise unmitigated questions about his judgment and reliability. Moreover, Applicant has been gainfully employed since 2013 and, despite making past promises to address and resolve his student loan debt, took no action to address this long-standing debt until shortly before his hearing. He also did not reach out and try to resolve his state tax debt. Instead, only through involuntary enforcement action has a payment toward this debt recently occurred.

Accordingly, I find that the disqualifying conditions listed at AG ¶¶ 19(a) through 19(c) apply. None of the mitigating conditions fully apply. Overall, the record evidence regarding the manner in which Applicant has handled his personal financial obligations leaves me with doubts and concerns about his ability and willingness to follow rules and regulations for the proper handling and safeguarding of classified information.⁴

³ 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.")

⁴ In reaching this adverse decision, I considered the whole-person concept, including the honesty Applicant showed in reporting the adverse information. See generally AG ¶ 2. However, this and the other favorable record evidence are insufficient to mitigate concerns raised by his financial circumstances. I also considered the exceptions listed in SEAD 4, Appendix C, but none are warranted in this case.

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 and 1.b: 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