



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03414

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

09/06/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

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

Statement of the Case

On December 8, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR on January 13, 2017, and requested a hearing to establish his eligibility for continued access to classified information.

On June 14, 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 at the hearing

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).

were admitted into the administrative record without objection. (Government Exhibits (GE) 1 – 5; Applicant's Exhibits (AE) A – I.) The transcript of the hearing (Tr.) was received on June 25, 2018. At the request of Applicant, without objection, the record remained open until June 29, 2017. Applicant timely submitted documents that were marked as AE J through Q and were admitted without objection. I reopened the record *sua sponte* on August 24, 2018 for one week, without objection, to allow Applicant to submit additional documents. Applicant timely submitted two documents that I marked as AE R and AE S and which were admitted into evidence, without objection.

Procedural Issue

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.”² 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, 2017.³ 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).⁴ 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.

Findings of Fact

Applicant is 41 years old and a high school graduate. He is married and has a daughter (age 15) from his first marriage. Applicant served on active duty in the U. S. Navy for just two weeks short of 14 years (from February 1999 to February 2013). He was honorably discharged.⁵ Since March 2013, Applicant has been employed by defense contractors.⁶

When Applicant was discharged from the Navy, he did not have a job lined up. So, he was unemployed for about a month. Applicant also was unemployed from January

² SEAD-4, ¶ B, *Purpose*.

³ SEAD-4, ¶ C, *Applicability*.

⁴ See also ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Appeal Board stated: “Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.”).

⁵ Tr. 13-14; AE A. Applicant was administratively separated in 2013, because he failed to be promoted from an E-5 to an E-6. Tr. 24-25.

⁶ GE 1.

2017 to April 2017, when his employer's defense contract ended. He currently makes \$82,500 per year. Applicant's spouse makes about \$1,400 per year. Applicant's only other source of income is his Department of Veterans Administration disability benefit of \$1,250 per month.⁷ Other than a purchase of a used car, he has made no large purchases and has not taken vacations.⁸ Financially, he is in a much better condition today than he was when he was in the Navy.⁹ He sets email alerts to remind him to pay his bills timely. Just before the hearing, he consulted with a money management firm, and they prepared a budget for him. In addition, he has set up a number of automatic allotments, so he does not have to worry about being late.¹⁰

The SOR alleges that: (1) Applicant filed for Chapter 13 protection in October 2011, which was dismissed in May 2013 for failure to make plan payments, and (2) Applicant has 10 delinquent debts totaling \$32,833.¹¹ Except for SOR ¶¶ 1.f, 1.i, and 1.j, Applicant admitted the SOR allegations with explanations.¹²

Applicant testified about his 2011 Chapter 13 filing. He was on active duty at the time stationed on a Navy ship. He found that after he had paid all his financial obligations on time, he was still struggling. He looked for a debt consolidation firm but could not find one. Applicant, then a second class petty officer, brought his financial problems to his chief petty officer in his chain of command. The chief recommended that Applicant file for bankruptcy protection. Applicant took his chief's advice, retained a bankruptcy lawyer, and filed a Chapter 13 proceeding. In retrospect, he believes he got bad advice from his chief.¹³

Applicant made timely monthly payments (\$600/month) while in Chapter 13 for about two years. Because he was shipboard, he put his wife in charge of making those payments under the plan. Applicant's wife, however, made a mistake and forgot to pay one monthly payment on time. She did send that payment in one week late. The payment was not accepted and was returned to Applicant's wife. Applicant contacted his bankruptcy lawyer who recommended that Applicant contact the trustee. After he

⁷ Tr. 26, 54-55.

⁸ Tr. 56-59.

⁹ Tr. 26.

¹⁰ Tr. 59-63; AE H. Applicant also testified that after his subject interview he contacted a financial specialist who advised him that in time his debts drop off his credit report. He followed that advice, until he received the SOR. Tr. 36-37.

¹¹ SOR ¶¶ 1.a-1.k.

¹² Answer ¶¶ 1.a-1.k.

¹³ Tr. 22-24, 30, 67, 70.

contacted the trustee and was told that the late payment was unacceptable, the Chapter 13 was dismissed in May 2013.¹⁴

Applicant next addressed the SOR debts. He testified that SOR ¶¶ 1.g (\$67) and 1.k (\$54) have been paid, and he produced documentation evidencing that.¹⁵

Applicant testified that SOR ¶ 1.d (\$3,703) was subject to a wage garnishment plan and submitted documents evidencing that.¹⁶

Applicant testified that he has disputed SOR ¶ 1.b (a \$19,696 charge-off). He claims that this debt was part of his Chapter 13 case and should have been settled and not charged off. His documentation supports his position.¹⁷

Applicant testified that SOR ¶ 1.c (\$5,363) was paid and that debt is a duplicate of SOR ¶ 1.e (\$2,649).¹⁸ Although upon further examination it appeared that those two debts were not duplicates, Applicant's post-hearing submission proves that they have been satisfied.¹⁹

Applicant testified that SOR ¶ 1.f (\$190) has been paid, and his post-hearing submission proves that.²⁰

Applicant testified that he disputes SOR ¶ 1.h (\$105).

Applicant testified that SOR ¶ 1.i (\$137) has been paid, and his post-hearing submission proves that.²¹

Applicant testified that he disputes SOR ¶ 1.j (\$869).²²

¹⁴ Tr. 18, 32-34, 68-71. Applicant's bankruptcy attorney did not offer to contact the trustee on his behalf about the late payment. *Id.* 70. Court documents indicate that Applicant's case was pending for 19 months. GE 3.

¹⁵ Tr. 15-16; AE C; AE L.

¹⁶ Tr. 17; AE I; AE K. The garnishment was not voluntary. *Id.* 46-47.

¹⁷ Tr. 18, 36-38. This debt was included in Applicant's bankruptcy, and at least one credit report describes it as part of the wage earner plan or settled for less than full balance. GE 3, p. 15; GE 5, p. 8; AE R.

¹⁸ Tr. 19-20.

¹⁹ Tr. 39-43; AE J; AE S.

²⁰ Tr. 30; AE L; AE N.

²¹ Tr. 21; AE P.

²² Tr. 21-22.

Applicant testified that he has paid SOR ¶ 1.k (\$54), and his post-hearing submission proves that.²³

In sum, Applicant has proven that he has successfully addressed the following debts: SOR ¶¶ 1. b, c, d, e, f, g, i, and k totaling, \$31,859 leaving \$974 unresolved.

Some of the SOR debts originated as far back as 2011, whereas some originated as recently as 2015. Some of the SOR debts are hold-overs from Applicant's Chapter 13. They are, however, still being reported as being delinquent.²⁴

Applicant submitted four character reference letters.²⁵ Each of the authors had first-hand knowledge of Applicant's character, because they came to know him while he was serving on active duty. One author also became reacquainted with Applicant when Applicant was employed by a defense contractor. His then immediate supervisor described Applicant as a "respectful, professional . . . dependable and trustworthy." Another author noted Applicant's "great commitment with a high degree of integrity." The third author admired Applicant's "honesty" and "trustworthiness." The final author, who was in charge of Applicant during his tour of duty, commended Applicant for being one of the "most respectable and honorable person [he's] ever served with" and "admired his dedication in service."

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).

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.

²³ Tr. 22; AE M.

²⁴ GE3; GE 4; GE 5.

²⁵ AE E.

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:

²⁶ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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, 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; 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 obligations to assess how they may handle their security obligations.²⁷ Here, Applicant's security clearance eligibility was called into question by his past financial problems. I conclude that disqualifying conditions AG ¶¶ 19(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

Applicant began having financial problems while he was on active duty in 2011. He searched for a credit counseling firm but was unsuccessful. Therefore, he sought advice from his ranking chief petty officer (at the time, Applicant was two ranks below his chief). His chief recommended that Applicant file for Chapter 13 bankruptcy protection. As a result, Applicant retained a bankruptcy lawyer and had a Chapter 13 case filed.²⁸ He made timely payments for almost two years. By oversight or mistake, Applicant's wife forgot to send one monthly payment to the trustee; she was one week late. Applicant contacted his bankruptcy lawyer, who advised him to contact the trustee. Applicant did so, was advised by the trustee that he was not accepting the payment, returned the payment, and shortly thereafter, in May 2013, dismissed the Chapter 13 for failure to make plan payments. The indebtedness that prompted Applicant to file for Chapter 13 protection originated in 2011 or earlier. Applicant reacted responsibly when he realized he was struggling financially. He sought guidance from his ranking chief petty officer. Applicant retained a bankruptcy lawyer and filed a Chapter 13 case. This was responsible conduct, as was his making timely payments under the plan. The case was dismissed only because of a mistake or inadvertence by his wife. These circumstances happened

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

²⁸ Applicant's theory was that he was given bad advice by his chief. Perhaps he was, but the lawyer he retained, we can infer, also believed a Chapter 13 was appropriate. Moreover, Applicant made almost two years of timely payments under the plan. As discussed below, the dismissal of the Chapter 13 was not the result of the chief's advice.

from 2011 or before and culminated with the premature dismissal in 2013. Such circumstances were infrequent, largely beyond his control, are unlikely to recur, and do not cast doubts about Applicant's current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and (b) apply.

The record shows that Applicant resolved almost all of his SOR debts (\$31,859 out of \$32,833). This was accomplished by settlements, pay-offs, or cancellations. In any event, Applicant's financial affairs are now in order.²⁹ AG ¶¶ 20(a) and (b) apply.

Conclusion

The record does not raise 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 met 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 SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F (Financial Considerations): For Applicant

Subparagraphs 1.a – 1.k: For Applicant

Philip J. Katauskas
Administrative Judge

²⁹ The \$974 of unresolved debt is *de minimis* and does not raise a security concern.

³⁰ AG ¶ 2(d)(1)-(9).