



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



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| In the matter of: |) | |
| |) | |
| REDACTED |) | ISCR Case No. 16-03462 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Tovah A. Minster, 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 January 7, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Specifically, the SOR alleges a federal tax lien from 2015 for \$86,000. Applicant answered the SOR, admitted the allegation, and requested a hearing to establish his eligibility for a security clearance.

On January 16, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing and Government Exhibits 1 – 5 were admitted into the administrative record without objection. At the start of the hearing, Applicant acknowledged he was aware that he was responsible for presenting evidence to mitigate the security concerns raised by his tax debt. He testified that he stopped making payments on an installment agreement to resolve the tax debt in approximately May 2017. (Transcript (Tr.) at 10, 24, 36) He presented no documentary evidence. The transcript of the hearing was received on January 23, 2018.¹

¹ Correspondence, the notice of hearing, the case management order, and other administrative documents, if any, were marked and are attached to the record as Appellate Exhibit I.

Findings of Fact²

From 2003 to 2004, Applicant was on active duty in the U.S. military. His military service included assignment to an overseas base and a remote U.S. base. Before separating from the military, Applicant was deployed to Iraq for five months. He received an honorable discharge from the military and then returned to Iraq to work as a U.S. Government (USG) contractor. He worked in Iraq as a USG contractor for three years, from 2007 to 2010. His problematic tax situation began at this point. He did not file his tax returns nor requested extensions.

When Applicant returned to the United States in 2010, he did not address his tax situation. He testified that he was financially irresponsible during this period. He subsequently met his wife, which helped him mature. He is now married and the father of two young children. Applicant, his wife, and their children live with his mother-in-law in a house that she owns. He contributes to the household's expenses.

Applicant worked as a USG contractor in Afghanistan in 2012. He has been working as a cable installer for his current employer for nearly three years. He submitted a security clearance application in connection with his current job in 2015. In response to questions about his financial history, Applicant reported the tax lien at issue. (Exhibit 1 at 44-45)

After receiving an IRS notice about his overdue tax returns and past-due income taxes, Applicant started to address his tax situation in approximately 2013. He hired a tax professional, who helped him prepare and file his overdue tax returns. The tax professional also helped Applicant negotiate two successive installment agreements with the IRS. Applicant testified that he made the monthly installment agreements from approximately April 2013 to May 2017, when his income decreased due to a slow down at work. He contacted the IRS, but was unable to negotiate a modification. He stopped making the monthly installment payments in approximately May 2017. Applicant testified that he has hired another tax professional to assist him in negotiating a new installment agreement with the IRS. He has been making payments to the tax professional, with the expectation that the money will be used for an anticipated offer and compromise. He estimates that the current balance of his federal tax debt is \$81,000. He provided no documentation to corroborate his testimony.

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).

² Unless otherwise indicated by a parenthetical citation to the record, the facts herein are primarily taken from Applicant's testimony. See Tr. 18-36.

“[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, ¶ E3.1.32.1.³

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

³ 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).

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

AG ¶ 19(f): failure to file or . . . failure to pay annual Federal, state, or local income tax as required;

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;

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

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

An applicant who fails to timely file or pay his or her taxes, a basic and fundamental financial obligation of all citizens, bears a heavy burden in mitigating the financial considerations security concern.⁴ An administrative judge should closely examine the circumstances giving rise to an applicant's tax-related issues and his or her response to it. Furthermore, an applicant's claim of financial reform must be weighed against the lack

⁴ *See generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues).

of judgment and reliability evidenced by the person's failure to timely file their income tax returns or pay their taxes.⁵

Applicant failed to meet his burden of proof and persuasion. Notably, he failed to present documentation to substantiate his testimony that: (1) he made the monthly payments per the terms of an installment agreement for four years, (2) he hired a tax professional to renegotiate his installment agreement due to a decrease in income, and (3) he made payments to the tax professional to facilitate an offer in compromise. Applicants are expected, especially in case involving tax-related issues, to present substantial documentation showing that they are addressing their tax situation. They are also expected to present evidence of financial reform. ISCR Case No. 16-01869 at 2 (App. Bd. Jan. 17, 2018). Applicant, who was well aware of his responsibility to present such evidence, failed to do so. Accordingly, I find that the disqualifying conditions listed at AG ¶¶ 19(c) and 19(f) 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.⁶

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:

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| Paragraph 1, Guideline F (Financial Considerations): | AGAINST APPLICANT |
| Subparagraph 1.a: | 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

⁵ ISCR Case No. 14-05794 (App. Bd. July 7, 2016); ISCR Case No. 14-00221 (App. Bd. June 29, 2016); ISCR Case No. 15-01031 (App. Bd. June 15, 2016); ISCR Case No. 12-09545 (App. Bd. Dec. 21, 2015).

⁶ In reaching this adverse decision, I considered the whole-person concept, including the honesty Applicant showed in reporting the adverse information and his service in a hostile environment. *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. Arguably, Applicant's past and present efforts to resolve his tax debt and service to the country would warrant a conditional clearance. However, Applicant's failure to provide corroborating documentation leaves me with insufficient evidence upon which to grant a conditional clearance. He is of course free to present such evidence to the Appeal Board, which now has the authority to grant such a clearance.