



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 16-03706
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

02/07/2018

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 28, 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 decision on the administrative (written) record.

On February 10, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant five exhibits, pre-marked Items 1 – 5, which the Government offers for admission into the record. Applicant received the FORM on February 23, 2017. (Appellate Exhibit I.) He was given 30 days to raise any objection to the material offered by Department Counsel and submit evidence in support of his case. He did not file any objections or submit a response. Without objection, Items 1 – 5 are admitted into the record.

On November 3, 2017, I was assigned the matter for decision. After receiving written confirmation that Applicant remains sponsored for a security clearance (Appellate

Exhibit II), I reopened the record to allow both sides to supply updated information. (Appellate Exhibit III.) Applicant submitted a number of documents that were collectively marked Item 6 and are admitted into the record without objection. The record closed on November 20, 2017.

Findings of Fact

Applicant is a 35-year-old married father of three. He graduated from high school in 2001 and enlisted in the U.S. military. He served on active duty from 2001 to 2006, and then began working for a large defense contractor. Applicant was laid off by his former employer in 2010. Since then, he has experienced several periods of unemployment.¹

After being laid off in 2010, Applicant attended a technical college to improve his job prospects. He earned an associate's degree in 2012. He was hired by his current employer in approximately January 2015. He started the new job in March 2016, but experienced another period of short-term unemployment from July to September 2017. He has received good performance evaluations and has a good reputation at his new place of employment for his punctuality, trustworthiness, and reliability. He is seen as a team player who places the mission of his employer and the U.S. Government client first. He has deployed in support of the client's mission.²

In January 2015, Applicant submitted a security clearance application in connection with his current job. He reported having accumulated delinquent debt due to unemployment. During a security clearance interview in July 2016, Applicant discussed his past-due debts, including the 13 debts totaling about \$33,000 listed on the SOR. He explained to the security clearance investigator that following the layoff in 2010 he was able to keep pace with his bills for a time, but then began falling further and further behind. He lost his home to foreclosure and was unable to pay his credit cards and other debts.³

Applicant has resolved 5 of the 13 SOR debts. The five resolved debts total less than \$1,500.⁴ Applicant provided a 1099-A form relating to the 2010 foreclosure of his former home. The 1099-A reflects that the fair market value of the home at the time the lender acquired it was \$111,000, but the outstanding mortgage balance was approximately \$125,000.⁵

Applicant has not addressed the remaining eight SOR debts, which total over \$30,000.⁶ Recent credit reports reflect no new negative entries and show that Applicant

¹ Specifically, he was unemployed from March 2010 to December 2011, October 2013 to January 2014, and November 2014 to January 2015. Items 1 – 3, 6.

² Items 2, 3, 6.B.

³ Items 2 and 3.

⁴ Specifically, Applicant provided sufficient evidence showing he satisfied the debts listed at SOR 1.c, 1.d, 1.k – 1.m. (Item 6.C, Item 6.D, and Item 6.L at 78.)

⁵ Item 6.H.

⁶ Item 1 (in answer admits all SOR debts), Item 6.

is paying his current debts as agreed.⁷ A November 2017 credit report, however, points to potential financial trouble on the horizon. Notably, the report reflects that the outstanding balance on one of Applicant's credit card accounts has risen in 11 months from \$1,600 in January 2017 to nearly \$6,000 in November 2017.⁸ Applicant has not obtained financial or credit counseling.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 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).

⁷ Item 6.L – Item 6.M. Applicant's October 2017 credit report states that past judgments and liens would generally not be reported on a credit report seven and ten years, respectively, after they were filed. (Item 6.L at 77.) Applicant told the security clearance investigator that he incurred the majority of the delinquent debts listed on the SOR in approximately 2010, and the 1099-A confirms that his former home was foreclosed in 2010. (Item 3; Item 6.H.)

⁸ Item 6.N.

⁹ Item 6.

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 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;

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 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(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.

Persons applying for a security clearance are not required to be debt free, or have unblemished financial records, or a certain credit score. However, they are expected to present evidence explaining the circumstances leading to their financial issues and mitigating security concerns raised by such issues. Moreover, they bear the burden of showing that they manage their personal finances in a manner consistent with the expectations for those granted access to classified information.¹¹

Applicant failed to meet his burden of proof and persuasion. His financial problems appear to be largely attributable to periods of unemployment from 2010 to the present. He has addressed a few minor debts listed on the SOR, but I am unable to extend full consideration of AG ¶ 20(b) and the other mitigating conditions in his favor because he has yet to address over \$30,000 in delinquent debt. He has been aware of the security concerns raised by his delinquent debt for some time and has yet to take action to address the vast majority of them. Furthermore, Applicant has not obtained financial counseling and a recent credit report suggests the possibility of additional financial issues in the not too distant future. Accordingly, the disqualifying conditions listed at AG ¶¶ 20(a) and 20(c) apply and the favorable evidence is not sufficient to outweigh the security concerns at issue. Applicant's financial situation remains a security concern.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.b, and 1.e-1.j:	Against Applicant
Subparagraphs 1.c, 1.d, and 1.k – 1.m:	For Applicant

¹¹ 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.")

¹² In reaching this adverse decision, I considered the whole-person concept, including Applicant's military service, favorable employment record, and reference letters. See *generally* AG ¶ 2. However, this and the other favorable record evidence are insufficient to mitigate concerns raised by his financial situation.

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 I considered the exceptions listed in SEAD 4, Appendix C. Applicant's debt resolution efforts to date, candor during the security clearance process, and the other favorable record evidence support extending a conditional clearance. However, insufficient evidence was submitted to allow me to find that the imposition of additional security measures would sufficiently address the security concerns at issue. Notably, Applicant failed to show that he is: (a) addressing the remaining SOR debts, (b) receiving financial or credit counseling, and (c) currently living within his means. The record is also silent as to whether Applicant's employer is willing to monitor his compliance with any such security measures or conditions and report to the Government if he fails to do so. Accordingly, a conditional clearance is not warranted.