



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



In the matter of:)	
)	
RECATED)	ISCR Case No. 16-03966
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
John Bayard Glendon, Esq., Deputy Chief Department Counsel

For Applicant: *Pro se*

05/01/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his financial situation. Clearance is granted.

Statement of the Case

On February 2, 2017, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Applicant answered the SOR and requested a hearing.

On January 18, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing. The exhibits offered by the parties were admitted into the administrative record without objection.¹ The transcript (Tr.) of the proceeding was received on January 26, 2018, and the record closed on February 21, 2018.

¹ Government Exhibits 1 – 8 and Applicant's Exhibits A – D.

Findings of Fact

Applicant, 42, is married, but he and his wife are living apart. He has two minor children from previous relationships. He is a disabled U.S. military veteran, who served in the military from 2001 to 2015. After separating from the military, Applicant obtained a job as a federal contractor and currently earns an annual salary of approximately \$65,000. He also obtained part-time work to help pay his old debts, keep current with his recurring expenses, and help out his family financially. He expects to start receiving about \$1,700 a month in VA disability payments and will then start college, which he will primarily pay for through the G.I. Bill. He has received some informal financial counseling, and currently lives with his parents to save on expenses. (Tr. 27-32, 41-44, 61-62)

Applicant pays approximately \$1,200 a month in child support. He fell into arrears when he left the military and decided to send his child support payments directly to his children's mother instead of sending the payments to the appropriate child support enforcement agency. Later, a court did not include these direct payments to his children's mother in determining the amount of child support Applicant owed. (Tr. 32-39, 44-50, 57) Applicant provided documentary proof that he has been paying his child support obligation on a consistent monthly basis for over two years. (Exhibits C, D)

Applicant also provided documentary proof that he paid his former landlord the debts that led to the default judgments listed in SOR 1.c – 1.e. These default judgments were obtained while Applicant was deployed with the U.S. military in a combat zone. Applicant's former landlord recently alerted the court that the judgments were satisfied. (Tr. 39-41, 50-54, 58-59; Exhibits A, B) The SOR also alleges in ¶ 1.f a relatively minor \$600 debt, which Applicant credibly testified is his wife's debt that he will resolve. (Tr. 41-42) The debts listed in the SOR have been resolved or are being resolved.

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.

"[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

² However, a judge's mere disbelief of an applicant's testimony or statements, 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).

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.³

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

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 . . . 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; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

A security clearance adjudication is not meant to punish a person for past poor financial decisions. Furthermore, 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 mitigating security concerns raised by

³ See *generally* ISCR Case 12-09719 at 2 (App. Bd. April 6, 2016) (delinquent debt raises a security concern, because the "failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information.")

the presence of delinquent debt and showing that they manage their present finances in a manner expected of all clearance holders.⁴

Here, Applicant demonstrated that his past financial issues do not cast doubt on his current judgment, reliability, trustworthiness, and ability to handle and safeguard classified information. Although the default judgment that Applicant's former landlord was able to obtain while he was deployed was a matter beyond his control, the majority of Applicant's financial problems were attributable to his own past poor decisions. He, however, has not disregarded financial obligations. He provided substantial evidence showing that over the past few years he has responsibly addressed his past debts, notably, his child support obligation, and taken steps to take control of his finances. He provided documentary proof showing that he either paid or is paying his debts. In short, Applicant demonstrated that, though his financial situation may not be perfect, he is responsibly managing his financial affairs. AG ¶¶ 20(a) through 20(e) apply. Overall, the record evidence leaves me with no questions or doubts about Applicant's present eligibility for a security clearance.⁵

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.f: For Applicant

Conclusion

In light of the record evidence, it is 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 granted.

Francisco Mendez
Administrative Judge

⁴ See *generally* ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁵ In reaching this favorable conclusion I also considered the whole-person concept. See *generally* AG ¶ 2. See also SEAD-4, ¶ E.4; Directive, ¶ 6.3.