



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-00468
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Koroian, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. After receiving a Chapter 7 bankruptcy discharge in 2006, Applicant accumulated a substantial amount of past-due debt, including \$60,000 in delinquent student loans. Despite gainful employment since January 2015, he has yet to take responsible action to address and resolve his past-due debts. Clearance is denied.

Statement of the Case

On March 21, 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 that Applicant incurred approximately \$75,000 of delinquent debt after receiving a Chapter 7 discharge in 2006.

On May 22, 2017, Applicant answered the SOR. He admitted the SOR allegations and requested a determination on the administrative (written) record.

On June 30, 2017, Department Counsel sent Applicant a file of (allegedly) relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant six exhibits, which were pre-marked Items 1 – 6, that the Government offers for admission into the record. Applicant submitted a Response to the FORM. With his Response,

Applicant submitted a number of documents for the record. Applicant's Response and the accompanying documents were collectively marked Item 7. The exhibits offered by the parties, Items 1 – 7, are admitted into the record without objection.

On November 3, 2017, I was assigned the case. Subsequently, I received written confirmation that Applicant remains sponsored for a security clearance.¹ Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

Findings of Fact

Applicant, 54, served in the U.S. military from 1990 – 1999. He served in Operation Desert Shield / Desert Storm. He received awards for his military service and was promoted to sergeant before being honorably discharged in 1999. After leaving the military, Applicant earned an associate's and then a bachelor's degree. He attended graduate school from 2013 – 2015, but, as of the date of the submission of his security clearance application (SCA) in June 2015, had not been conferred another degree.

Applicant is on his fourth marriage. He and his current wife married in 2012 and together they have five children. Applicant received a Chapter 7 bankruptcy discharge in February 2006. His current financial problems began in approximately 2011, when he left his employment as a security guard at an airport under adverse circumstances. In his SCA, Applicant states that he left "for making a mistake in company policies and procedures."² He subsequently explained to a security clearance investigator that he gave his wife, who had just started working at the same location, his badge to get into the employee parking lot since she had not yet received her own employee badge. He knew it was a violation of company policy to give or loan anyone his badge. His wife was fired for the incident and he was given the option to voluntarily leave or be fired. He left and was unemployed from approximately October 2011 to about December 2014.³

While unemployed, Applicant returned to school to improve his job prospects. Also, during this period, Applicant defaulted on a significant amount of delinquent debt. Notably, Applicant defaulted on his student loans, which total approximately \$60,000. He also accrued about \$15,000 in other delinquent debt. In 2012, one of Applicant's creditors secured a \$7,800 judgment and wage garnishment against him. The creditor recently made a business decision to close the account. This debt is referenced in SOR 1.I. It is the only debt, of the 16 SOR debts, that has been resolved. Applicant was made aware of the SOR debts during his September 2016 security clearance interview.⁴

In January 2015, Applicant was hired by his current employer and a few months later submitted an SCA in connection with the job. In response to questions regarding his

¹ Appellate Exhibit I.

² Item 3 at 13.

³ Item 3 at 12; Item 6 at 6.

⁴ Item 3; Item 5 – Item 7.

financial history, Applicant reported the debt in 1.I and his delinquent student loans. He claimed that his student loans totaled about \$11,000.⁵ A subsequent credit check revealed that Applicant's delinquent student loans totaled about \$60,000. The credit check also disclosed a number of other delinquent accounts.⁶

In September 2016, Applicant discussed his delinquent accounts with a security clearance investigator. He told the investigator that he had received collection notices from many of the creditors for the delinquent accounts listed on the SOR, including notices about his student loans. These collection notices informed Applicant that his delinquent student loans totaled about \$60,000. Applicant also told the investigator that he tried to resolve his student loan delinquency, but the creditor was unwilling to work out a reasonable payment schedule.⁷

Applicant submitted reference letters from community members, coworkers, and supervisors. These references state that Applicant is hardworking, reliable, and trustworthy.

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).⁸

"[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.

⁵ Item 3 at 42.

⁶ Item 5.

⁷ Item 6 at 5, 13.

⁸ Nonetheless, I have considered the previous version of the adjudicative guidelines and my ultimate decision in this case would have been the same.

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, ¶ E3.1.32.1.⁹

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

⁹ 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 solely 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).

questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.¹⁰

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.¹¹

In assessing Applicant's case, I considered the disqualifying and mitigating conditions listed under Guideline F, including the following:

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.

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.¹² Applicant failed to meet his burden of proof and persuasion.

¹⁰ AG ¶ 18.

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

¹² 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.")

Applicant accumulated a sizeable amount of delinquent debt after receiving a Chapter 7 discharge in 2006. The disqualifying conditions listed at AG ¶¶ 19(a) and 19(c) apply. Applicant did not provide sufficient evidence to establish any of the mitigating conditions. Notably, notwithstanding gainful employment since January 2015, the only SOR debt that has been resolved is one where the creditor was forced to seek a court order. Applicant's inability or unwillingness to responsibly address his delinquent accounts and take control of his financial affairs raises unmitigated security concerns that I must resolve in favor of protecting national security. Overall, the record evidence regarding the manner in which Applicant handles 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.¹³

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.q: 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

¹³ In reaching this adverse decision, I considered the whole-person concept. *See generally* AG ¶ 2. I also considered the exceptions listed in SEAD-4, Appendix C, but none are warranted in this case.