



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



In the matter of:)
)
-----) ISCR Case No. 17-00464
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/17/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

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

Statement of the Case

On March 29, 2017, 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 April 25, 2017, and requested a hearing to establish his eligibility for continued access to classified information.

On June 26, 2018, a date mutually agreed to by the parties, a hearing was convened. At that hearing, Applicant stated that he was unaware that he could retain a

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).

lawyer to represent him. He indicated that he would at least like to consult with a lawyer to decide if he should retain a lawyer or represent himself. Without objection, the hearing was continued for that reason.² The rescheduled hearing was held on August 29, 2018. Applicant, and the exhibits offered by the parties at the hearing were admitted into the administrative record without objection. (Government Exhibits (GE) 1 – 6; Applicant's Exhibits (AE) A – P.) The transcript of that hearing (Tr.) was received on September 7, 2018. At the request of Applicant, without objection, the record remained open until September 19, 2018. Applicant timely submitted a document that was marked as AE Q and admitted 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.”³ 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, 2017.⁴ In light of this explicit direction, 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).⁵ 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 37 years old and a college graduate. He has never married and has three children, ages ten, eight, and seven. Since December 2014, Applicant has been employed by defense contractors.⁶

Under Guideline F, the SOR alleges that between about 2012 and June 2016 Applicant gambled at least once or twice a month and that his financial delinquencies are due, at least in part, to his gambling.⁷ The SOR also alleges 12 delinquencies totaling

² Transcript of the June 26, 2018 hearing 5-7.

³ SEAD-4, ¶ B, *Purpose*.

⁴ SEAD-4, ¶ C, *Applicability*.

⁵ 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.”).

⁶ GE 1; Tr. 28-29.

⁷ Applicant admitted that he visited the casino for recreational purposes, is not addicted to gambling, can stop at any time, and is not financially overextended by his gambling. Answer ¶ 1.a.

\$52,180.⁸ Applicant admitted SOR ¶¶ 1. c, h, and i. With his answer to the SOR, Applicant provided documentation that he resolved those debts. He denied SOR ¶¶ 1.k through m, and with his answer he provided documentation that he resolved those debts.⁹ Applicant denied the gambling allegation and the remaining delinquent debts, except for SOR ¶¶ 1. b and h, which he admitted were repossessed autos caused by being unemployed.¹⁰ There is, however, record support for those remaining delinquent debts.¹¹ As to SOR ¶ 1.f (a \$10,069 judgment), Applicant's answer and his testimony were that this debt was not his account; it was his father's account. Applicant stated that he contacted the credit reporting agency, and that the debt was removed.¹²

Applicant testified that he earned his college degree in 2005. He has a cohabitant, and they have lived together for almost five years. His cohabitant has three children, the oldest of whom is in college, and the two younger ones are in high school. The children live with Applicant and his cohabitant. The cohabitant does not receive any child support for her children. The cohabitant has full-time employment and makes about \$100,000 per year, and Applicant makes about \$130,000 per year. Applicant and his cohabitant split household expenses evenly.¹³

Applicant testified about his gambling. In his June 2016 background interview, he indicated that when the casino opened he frequented it about three times a week. After the first year, Applicant went about once or twice a month, and he has never taken more than \$2,000 to the casino and has never won more than \$4,000 in one visit. Now he goes maybe once a month and takes less than \$500 per visit. Since 2013, Applicant estimated that he has lost between \$35,000 to \$40,000.¹⁴

Applicant testified about his visitation rights and child support obligations for his son, who lives with his mother.¹⁵ From 2012 until March 2017, the mother had primary

⁸ SOR ¶ 1.

⁹ Answer ¶¶ 1.c, d, h, l, k through m (attachments).

¹⁰ Answer ¶¶ 1.a, b, e-g, and j. Applicant had three periods of unemployment. The first was from April 2009 to December 2009, when the mother of his children was sent to prison. The second was from September 2013 to March 2014 (when he learned his employer was going to cut his pay in half as part of a downsizing) and the third from September 2014 to December 2014 (when the contract he was servicing ended). Tr. 27-28, 71-72; GE 1; GE 2, PSI, pp. 6, 10-11.

¹¹ GE 3, p. 3; GE 4, pp. 5, 7-8, 11; GE 5, Trade Line 4.

¹² Answer ¶ 1.f; Tr. 69-70. The record supports Applicant. GE 5, Trade Line 8 (zero balance, zero past due, and marked "Paid").

¹³ Tr. 23-26, 81-83.

¹⁴ GE 2, p. 12 of PSI; Tr. 61-64. From 2012 to 2015, Applicant reported no losses on his tax returns and \$3,800 of winnings in 2013. GE 2, last page.

¹⁵ Past due child support is alleged in SOR ¶ 1.g (\$2,629).

custody of Applicant's son and the mother's other two children, which were not Applicant's children. Applicant had visitation rights, and since January 2015 he was paying \$3,700 per month (it occasionally varied) for his son.¹⁶ By December 2014, he was about \$15,000 in arrears.¹⁷ Not long before the hearing, Applicant was \$26,929 in arrears.¹⁸ The explanation for that arrearage is somewhat complicated.

Late February 2017, Applicant filed a petition for modification of child support. On March 1, 2017, the sheriff went to the mother's house to serve her with that petition. The officer telephoned Applicant and asked where the mother was; Applicant said he did not know. The officer said that Applicant's children were apparently alone in the house and that they were too young to be unsupervised. The officers did a forcible entry, and they found the mother intoxicated. So, Applicant came and took the children home, fed them, and they stayed the night. In the morning (March 2), he took them to school, notified the principal about what had happened, and said that he would return to pick up the children.

Applicant filed an emergency petition for custody on the same day, but it was dismissed because at that time he was deemed to already have physical custody. When Applicant went back to the school, the mother had already picked up the children. Applicant believed that the mother, who is unemployed, was using his son as leverage to get more child support. He never saw the children until May 2017, even though he was supposed to have regular visitation rights for his son.¹⁹

On May 10, 2017, Applicant got a phone call from his son, then seven years old, who said he was having trouble breathing. The mother was on the floor, intoxicated, and passed out. Applicant told his son to put the phone on speaker and hold it near the mother's ear. That did not revive her. Applicant called an emergency number and asked them to go to the mother's house. They did so, found the mother passed out and intoxicated. The son was treated, successfully, for an asthma attack. As a result of that episode, Applicant on that day was given physical custody of the three children.

The financial problem Applicant suffered was that the child support payments were still being deducted automatically, even though he had physical custody of the three children and took care of all their expenses. In October 2017, the court issued an order allowing Applicant to stop paying child support. It did not, however, correct any arrearage to give Applicant credit for payments made while he had custody of the children. The mother, pursuant to court order, has had primary custody since February 22, 2018.²⁰

¹⁶ AE B.

¹⁷ Tr. 30. This was likely due in part to the September 2014 to December 2014 period of unemployment. Applicant was arrested for being in arrears, but his cohabitant posted his bail. Tr. 30.

¹⁸ AE B (notice dated April 30, 2018). As of June 22, 2018, the arrearage was \$27,146. GE 5, Trade Line 4.

¹⁹ Tr. 30-35. Applicant pays child support only for his son, not the two other children the mother has from other fathers. Tr. 61.

²⁰ Tr. 35-40; AE I; AE K.

Post-hearing, Applicant and the mother signed a consent order giving her primary custody with Applicant having visitation rights and paying child support of \$2,700 per month.²¹ A court audit hearing needs to be scheduled to correct the amount of the arrearage to reflect credits due to payments Applicant made while he had physical custody.²²

SOR ¶ 1.b is a charge-off of an auto loan for \$13,745. The loan was taken out in 2012. The loan became delinquent in 2014 and the car repossessed because Applicant was unemployed. He has contacted the lender to schedule a payment plan, but no plan has been put in place.²³

SOR ¶ 1.e is a 2013 judgment for \$13,913. Applicant denied any knowledge of this debt in his answer. He testified that he has disputed this debt with one of the credit reporting agencies. Applicant provided no documents evidencing that dispute.²⁴

SOR ¶ 1.h is an auto loan in collection for \$10,206. This loan was taken out in 2008 and went delinquent in 2009. In 2009, the mother of Applicant's children went to prison for being involved in a fatal car accident. Applicant was left to care for the children, so he had to leave his job to do so. He survived financially using his savings and his 401(k) account. Applicant thought he had made some payments on the loan, but he submitted no documents evidencing that.²⁵

SOR ¶ 1.j is a utility bill for \$365. Applicant testified that he contacted the creditor, who said they did not have an account for him in their system. He asked if it could send him something saying that. The creditor replied that it could not, because he had no account with it. Therefore, Applicant has no paperwork documenting that contact.²⁶

In sum, Applicant has favorably addressed eight delinquent debts totaling \$11,687.²⁷ The remaining delinquencies total \$40,493.²⁸

²¹ AE Q (September 18, 2018). The consent order reduced Applicant's child support payment from \$3,773 per month to \$2,700 per month. *Id.*

²² Tr. 52-53; Email from Applicant to me and Department Counsel dated September 19, 2018 (8:56 PM). Applicant intends to make the payments under the recent consent order until a court audit hearing takes place to adjust the arrearage. *Id.*

²³ Tr. 64-65.

²⁴ Tr. 67-69.

²⁵ Tr. 71-72; GE 2, PSI, pp. 6, 10-11.

²⁶ Tr. 73-75.

²⁷ SOR ¶¶ 1.c, d, f, and i-m. Included in this list is SOR ¶ 1.j, the \$356 utility bill for which Applicant was unable to get documentation, because the creditor had no account for him. In this case, it seems unfair to have Applicant prove a negative.

²⁸ SOR ¶¶ 1.b, e, g, and h.

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.

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.²⁹

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(h): borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts;

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;

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

²⁹ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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 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.³⁰ Here, Applicant's security clearance eligibility was called into question by his past financial problems. Applicant's answer to the SOR denied that he was addicted to gambling, that he is not financially overextended by gambling, and can stop at any time. At the same time, Applicant testified that since 2013 he has lost between \$35,000 and \$40,000 gambling. That is an average of about \$7,000 to \$8,000 per year. In roughly that same period of time, Applicant incurred or had already incurred about \$52,000 of unresolved debt. Gambling does not seem to be a prudent use of his remaining disposable income. I conclude that disqualifying conditions AG ¶¶ 19(a), (c), and (h) apply. The next inquiry is whether any mitigating conditions apply.

The largest single debt is Applicant's child support arrearage of about \$26,000. The circumstances that lead to that arrearage were certainly convoluted. Applicant had physical custody of the three children but at the same time was paying child support, even though he was covering all of their expenses. I find that the circumstances that lead to Applicant's hefty arrearage are unlikely to recur and do not cast doubt on his judgment. I also find that conditions that caused that arrearage were largely beyond his control. Applicant's conduct was to proceed with a new court-ordered custody and child support decree and to await the court audit to adjust the arrearage. This was responsible conduct. Applicant had no legal option other than to dispute the amount of the arrearage and seek a court remedy. AG ¶¶ 20(a), (b), and (e) apply.

SOR ¶ 1.b is an auto loan in collection for \$13,745. The loan was taken out in 2012 and went delinquent in 2014 during a period of unemployment suffered by Applicant. Applicant has contacted the lender to schedule a payment plan, but no plan is in place. Applicant has provided no documentation to support his plan. SOR ¶ 1.e is a 2013 judgment for \$13,913. Applicant denied any knowledge of this debt in his answer. Applicant claimed he has disputed this debt with one of the credit reporting agencies. Applicant provided no documents evidencing that dispute. The Appeal Board has previously noted that it is reasonable for an administrative judge to expect applicants to present documentation about the satisfaction or other resolution of individual debts.³¹ Applicant has failed on that score. No mitigating conditions apply. Therefore, I find against Applicant on those two debts.

³⁰ See generally ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

³¹ See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008); ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

SOR ¶ 1.h is an auto loan in collection for \$10,206. This loan was taken out in 2008 and went delinquent in 2009. In 2009, the mother of Applicant's children went to prison for being involved in a fatal car accident. Applicant was left to care for the children, so he had to leave his job to do so. He survived financially using his savings and his 401(k). This delinquency took place almost 10 years ago, and the circumstances were so unusual that it is unlikely to recur. Applicant had no choice but to stop working to care for the children, live off of his savings, and await the mother's release from prison. AG ¶¶ 20(a) and (b) apply.

SOR ¶¶ 1.c, d, f, and i through m are mitigated under AG ¶ 20(d). SOR ¶ 1.a (gambling) has not been mitigated. The roughly \$7,000 to \$8,000 of annual gambling losses could have been more wisely spent reducing some of the SOR debts.

Conclusion

The record raises 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.³² Accordingly, I conclude that Applicant did not meet 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):	Against Applicant
Subparagraphs 1.a, b, e, and h:	Against Applicant
Subparagraphs 1.c, d, f, g, i-m:	For Applicant

Philip J. Katauskas
Administrative Judge

³² AG ¶ 2(a)(1)-(9).