



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



In the matter of:)	
)	
-----)	ISCR Case No. 17-00619
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/13/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

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

Statement of the Case

On March 23, 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 3, 2017, and requested a hearing to establish his eligibility for continued access to classified information.

On June 15, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing, and the exhibits offered by the Government were

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).

admitted into the record without objection. (Government Exhibits (GE) 1 – 5.) The transcript of the hearing (Tr.) was received on June 25, 2018. At the request of Applicant, without objection, the record remained open until July 2, 2018. Applicant timely submitted documents that I marked as Applicant's Exhibits (AE) A through C and have been admitted into the record 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."² 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, 2017.³ In light of this explicit direction (and absent lawful authority to the contrary), 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).⁴ 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 57 years old, has been separated from his spouse since November 2011 and has an adult daughter and an adult stepson. He has a General Equivalency Diploma and has completed one semester of college. When Applicant and his spouse separated, he was making about \$45,000 per year, and she was making about \$80,000 to \$85,000 per year. Since November 2012, he has worked for a defense contractor. Applicant's current salary is \$65,000 per year.⁵

The SOR alleges three delinquent debts totaling \$24,856, of which \$24,238 is an overdue balance on a home equity line of credit.⁶ Applicant denied the home equity debt

² SEAD-4, ¶ B, *Purpose*.

³ SEAD-4, ¶ C, *Applicability*.

⁴ *See also* ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Board stated: "Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.")

⁵ Tr. 7, 8, 21-23, 38; GE 1.

⁶ SOR ¶¶ 1.a-1.c.

and a \$200 delinquent traffic ticket. He admitted a \$418 medical debt.⁷ Both of the denied debts are, however, supported by the record.⁸

Applicant testified that the home equity line of credit was taken out before he and his spouse separated in 2011. They used the proceeds for home improvements and repairs. Both his name and his spouse's name are on that line of credit. When they separated, Applicant and his spouse agreed that she would keep the home and make the home equity payments.⁹ In his post-hearing submission, Applicant provided documents showing monthly payments Applicant's spouse made on the home equity loan from February 2017 to June 2018 (\$150 per month).¹⁰ The record also shows that the balance due on that loan declined from \$24,238 in March 2017, when the SOR was issued, to \$22,759 on the March 2018 credit report. That credit report also showed the date of last payment to be in January 2018. Because there is always a lag between the date a payment is made and the date that payment is reported, it appears that Applicant's spouse is keeping current and reducing the balance on that loan.¹¹ The spouse's payment history is evidence of the agreement about which Applicant testified.

With respect to the medical debt alleged in SOR 1.b (\$418), Applicant submitted a document showing that he successfully disputed that debt, and it has been deleted from his credit file.¹² Applicant did not provide documents showing the resolution of the \$200 traffic ticket alleged in SOR ¶ 1.c.

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).

⁷ Answer ¶¶ 1.a-1.c.

⁸ GE 3 through 5.

⁹ Tr. 24-26. The record shows that the home equity line of credit was taken out in June 2006. GE 5.

¹⁰ AE B and C.

¹¹ SOR ¶ 1.a; GE 5; Tr. 28-29.

¹² AE A; Tr. 31-32.

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.¹³

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 ¶ 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; 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 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.¹⁴ Here, Applicant's security clearance eligibility was called into question by his past financial problems and, primarily, by his failure to stay current on his home equity loan. I conclude that disqualifying conditions AG ¶¶ 19(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

It is clear that the only material debt is the home equity loan that Applicant and his spouse took out in 2006. When they separated in 2011, Applicant and his spouse agreed that she would keep the house and its attendant expenses, including the payments on the home equity loan. This made sense, because at the time Applicant's spouse was making almost double what Applicant was making per year. The record indicates that Applicant's spouse has kept up those payments and has reduced the balance due. The marital separation in 2011 is a condition unlikely to recur and was beyond Applicant's control. The agreement Applicant reached with his spouse about the home equity loan

¹³ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

¹⁴ See *generally* ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

was responsible conduct by Applicant under the circumstances. That debt is mitigated under AG ¶¶ 20(a) and (b).¹⁵

Conclusion

The record does not raise 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.¹⁶ Accordingly, I conclude that Applicant met 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):	For Applicant
Subparagraphs 1.a – 1.c:	For Applicant

Philip J. Katauskas
Administrative Judge

¹⁵ Applicant successfully disputed the medical debt alleged in the SOR, which mitigates that debt under AG ¶ 20(e). The \$200 traffic ticket is *de minimis* and does not raise any security concern.

¹⁶ AG ¶ 2(a)(1)-(9).