



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-01729
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/16/2018

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 June 17, 2017, 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 September 18, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant six exhibits, pre-marked Items 1 – 6, which the Government offers for admission into the record. Applicant received the FORM on October 2, 2017. (Appellate Exhibit I) He was given 30 days to raise an objection to the material offered by Department Counsel and submit his own evidence. He did not file an objection or submit a response. Accordingly, without objection, Items 1 – 6 are admitted into the record.

On February 13, 2018, I was assigned the case and then received confirmation that Applicant remains sponsored for a security clearance. (Appellate Exhibit II)

Therefore, I have jurisdiction to issue a decision in this case. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

Findings of Fact

Applicant, 31, has been employed as a federal contractor since October 2015. He is also a sergeant in the Army National Guard. He submitted a security clearance application (SCA) for his job as a federal contractor in October 2015. In response to questions on the SCA about his financial record, Applicant did not report having any delinquent debts. He was specifically asked if he had been delinquent on any child support payments or had any judgments entered against him in the past seven years. (Item 3 at 39) During the course of a security clearance interview in February 2016, Applicant was confronted with several delinquent accounts appearing on his credit report, including a past-due child support debt and judgments from 2013 and 2014. (Item 4)

Applicant admits seven of the nine delinquent debts listed on the SOR, including the past-due child support debt and the 2013 and 2014 judgments he discussed with the investigator in 2016. These seven debts total over \$15,000. Applicant provided no evidence showing that he has addressed or resolved any of these debts.¹

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

¹ Applicant denied the 2016 judgment alleged in SOR 1.d. No evidence was provided to substantiate this allegation. Applicant also denied the \$1,200 charged-off bank debt alleged in SOR 1.g, which is a debt owed by his former wife. These debts are resolved in Applicant’s favor.

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 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)

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).

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 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.

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 delinquent debt. They are also required to show that they manage their personal financial obligations in a manner consistent with the expectations for those granted access to classified information.⁴ Here, Applicant did not meet his burden of proof and persuasion.

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.")

⁴ See generally ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) ("[A]n applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has " . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.") (internal citations omitted). 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.")

Two years ago, during his security clearance interview, Applicant was made aware that the delinquent debts at issue raised a security concern. He has been gainfully employed as a federal contractor since 2015, yet presented no evidence showing what efforts, if any, he has made to address and resolve the seven SOR debts at issue. These seven debts total over \$15,000, and include past-due child support and judgments from 2013 and 2014. The disqualifying conditions listed at AG ¶¶ 19(a) and 19(c) apply. None of the above-listed mitigating conditions fully apply. Overall, the record evidence leaves me with 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):	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h – 1.i:	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

⁵ 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.