



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-01847
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2018

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 3, 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 determination on the administrative (written) record.

On July 31, 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's response to the FORM was marked Item 7. Without objection, Items 1 – 7 are admitted into the record.

On December 18, 2017, I was assigned the case. Subsequently, I received written confirmation that Applicant remains sponsored for a security clearance. (Appellate Exhibit I) Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

Findings of Fact

Applicant, 39, is employed as a federal contractor. He works as a pipefitter on a U.S. military installation. He graduated from high school in 1998, and served in the U.S. military from 1999 to 2002. Applicant and his ex-wife divorced in 2005. He has held a security clearance since 2006, and has been living with his mother since 2015. He submitted a security clearance application in July 2015 in connection with his job.

During the course of the security clearance investigation, Applicant reported that he started experiencing financial trouble in approximately 2012 when the IRS garnished his wages because of past-due federal taxes. He then became aware that his ex-girlfriend had not properly filed his federal and state income tax returns for 2006, and 2008 – 2012. He told a security clearance investigator that after the IRS garnishment action, he entered into an installment agreement with the IRS. He is paying \$50 a week. He submitted a recent statement in response to the FORM, showing that he is making the \$50 payments and, through those payments, he has reduced his federal tax debt to about \$6,900. Applicant's failure to timely file his federal income tax returns and his federal tax debt are listed at SOR 1.a and 1.b.

Applicant also told the security clearance investigator that he entered into a monthly repayment agreement to resolve his state tax. He supposedly started making \$150 monthly payments in 2014. He provided no documentation to substantiate his claims. Applicant's failure to timely file his state income tax returns and his state tax debt are listed at SOR 1.c and 1.d.

Applicant also reported on his security clearance application and discussed with the investigator a \$10,000 debt for a car that was repossessed in 2013. This debt is referenced at SOR 1.g. Applicant explained to the investigator that he was unable to make the monthly payments on the car after the IRS garnished his wages. He called the creditor to take the car back (voluntary repossession). He claims that he bought another car in 2014 and the creditor wrapped in the outstanding balance on the repossessed vehicle into the new car loan. He further claims to have been making his new monthly car payments. He provided no documentation to corroborate his statements.

During his security clearance interview, Applicant was about a number of other delinquent accounts appearing on his credit report. He was specifically asked about a \$8,600 judgment from 2008 and a \$445 judgment from 2013. These judgments are referenced at SOR 1.e and 1.f. Applicant promised the investigator that he would look into these debts. State public court records confirm both judgments and that they remain unsatisfied.

Applicant admitted the five collection accounts listed at SOR 1.h, 1.j, 1.k, 1.m, and 1.n, totaling approximately \$5,000. He provided no evidence showing what action, if any, he has taken to address and resolve these collection accounts. Applicant denied the other SOR debts. These delinquent debts are listed on his credit reports and he was made aware of most of them during his security clearance interview. He provided no evidence showing that they are not his debts or that he has taken action to address them.

As of March 2017, when Applicant's security clearance interview took place, he had not obtained financial or credit counseling. He claims that, in addition to the IRS garnishment, his financial situation was negatively impacted in 2015 after his father died and he incurred funeral-related expenses.

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).

"[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, ¶ E3.1.32.1.¹

¹ 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

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.)

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

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 ¶ 19(f): failure to file . . . or failure to pay annual Federal, state, or local income tax as required;

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;

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).

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;

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

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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.² Applicant failed to meet his burden of proof and persuasion.

Applicant's finances were impacted by matters beyond his control, notably, his ex-girlfriend's actions and increased expenses after his father died. He took responsible action to address his federal tax situation and it appears from the record evidence that he is in compliance with the repayment agreement to resolve his federal tax debt. However, I am unable to fully apply the above-listed mitigating conditions because Applicant did not provide supporting documentation to corroborate his assertions regarding the state tax debts, the judgments from 2008 and 2013, and the other delinquent debts listed on the SOR. Applicant's failure to submit such supporting documentation, as well as evidence regarding his current financial situation, leaves me unable to find in his favor in light of the high legal standard in these cases, requiring a judge to resolve any doubt raised by the evidence in favor of national security. Overall, the record evidence leaves me with doubts about Applicant's present eligibility for a security clearance.³

² 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.")

³ In reaching this adverse decision, I considered the whole-person concept, including Applicant's honesty and candor throughout the security clearance process. See *generally* AG ¶ 2. However, this and the other favorable record evidence is insufficient to mitigate the security concerns at issue.

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 and 1.b:	For Applicant
Subparagraphs 1.c – 1.p:	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.⁴

Francisco Mendez
Administrative Judge

⁴ I considered the exceptions in Appendix C, including granting a conditional clearance. See *also* SEAD-4, ¶ E.3 and Appendix A, ¶ 2(h). Arguably, requiring Applicant to provide his employer's facility security officer documentary proof that he is addressing his past-due debts and proof that he has obtained financial counseling, as well as requiring him to provide proof of financial stability (i.e., providing his employer a credit report every six months for the next three years), would sufficiently address the remaining security concerns. However, without evidence that Applicant's employer is willing to monitor Applicant's compliance with any such conditions and additional record evidence of efforts on Applicant's part to address the debts referenced in SOR 1.c – 1.p, I am unconvinced that the national security would be adequately protected through the grant of a conditional clearance. Accordingly, I decline to exercise this discretionary authority.