



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 17-01869
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Department Counsel  
For Applicant: *Pro se*

03/30/2018

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**Decision**

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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 July 15, 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 without a hearing.

On October 12, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant eight exhibits, pre-marked Items 1 – 8, which the Government offers for admission into the record. Applicant received the FORM on October 26, 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 – 8 are admitted into the record.

On March 16, 2018, I was assigned the case and then received confirmation that Applicant remains sponsored for a security clearance. (Appellate Exhibit II) Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

### **Findings of Fact**

Applicant, 38, holds a college degree. He received a Chapter 7 bankruptcy discharge in 2006. He was hired by his current employer, a defense contractor, in July 2015. He was previously employed by a different defense contractor. He submitted security clearance applications (SCA) in 2012 and 2014 for his employment in the defense industry.

Applicant reported on his 2012 and 2015 SCAs that he had significant financial problems. He stated during his 2012 and 2015 security clearance interviews that his financial problems were due to his own personal financial irresponsibility. He relied on credit cards to finance his lifestyle and did not save enough money to pay his taxes. He was audited by the IRS in 2010, and owed back taxes for 2005, 2007, 2008, and 2009. He paid those back taxes through monthly payments, but then did not have enough money to pay his present taxes. He decided not to file his 2010 and 2011 federal and state income tax returns. He indicated on his December 2014 SCA that he was going to file those overdue returns when he filed his 2014 tax returns. He then promised during his December 2015 security clearance interview that he would contact the IRS and state tax authority to resolve his tax situation. He claimed in his Answer to have resolved a tax lien, but presented no documentation to substantiate his claim, nor showing that he had actually filed the overdue 2010 and 2011 tax returns.<sup>1</sup>

Applicant also amassed unpaid credit card debt. He reported the debts on his SCAs and discussed them during the course of the two security clearance interviews. He indicated that he was making monthly payments toward resolving the \$3,200 judgment for a former credit card listed in SOR 1.c. During his initial and follow-up security clearance interviews in December 2015, Applicant claimed to have reduced the debt to less than \$400 before it was charged off. He also told the security clearance investigator that he received an offer to resolve the \$2,400 debt listed in SOR 1.d for \$240 and that he was purportedly making \$150 monthly payments to resolve the \$1,300 debt listed in SOR 1.f. He promised to address the credit card debts referenced in SOR 1.c – 1.f. He presented no documentation showing he had addressed or resolved any of the SOR debts.

### **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.

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<sup>1</sup> Only Applicant's failure to file his 2010 and 2011 federal and state tax returns were alleged. The non-alleged tax issues were only considered in assessing mitigation and conducting a whole-person review.

“[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.<sup>2</sup>

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

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<sup>2</sup> 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).

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

An applicant who fails to timely file or pay his or her taxes, a basic and fundamental financial obligation of all citizens, bears a heavy burden in mitigating the financial

considerations security concern.<sup>3</sup> An administrative judge should closely examine the circumstances giving rise to an applicant's tax-related issues and his or her response to it. Furthermore, an applicant's claim of financial reform must be weighed against the lack of judgment and reliability evidenced by the person's failure to timely file their income tax returns or pay their taxes.<sup>4</sup>

Here, Applicant failed to meet his burden of proof and persuasion. He has been aware that his financial situation raised a security concern for some time. He has been gainfully employed as a defense contractor since approximately 2012 (except for about two months in 2015), and has repeatedly promised to take action to address and resolve his tax situation and delinquent credit card debt. He presented no documentary evidence showing what efforts, if any, he took to address and resolve them. Accordingly, I find that the disqualifying conditions listed at AG ¶¶ 19(a), 19(c), and 19(f) apply. None of the mitigating conditions fully apply. Overall, the record evidence regarding the manner in which Applicant has handled 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.<sup>5</sup>

### **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.g:      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.

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Francisco Mendez  
Administrative Judge

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<sup>3</sup> See *generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues).

<sup>4</sup> ISCR Case No. 14-05794 (App. Bd. July 7, 2016); ISCR Case No. 14-00221 (App. Bd. June 29, 2016); ISCR Case No. 15-01031 (App. Bd. June 15, 2016); ISCR Case No. 12-09545 (App. Bd. Dec. 21, 2015).

<sup>5</sup> In reaching this adverse decision, I considered the whole-person concept, including the honesty Applicant showed in reporting the information on his SCAs and candor he exhibited during the security clearance interviews. See *generally* AG ¶ 2. However, this and the other favorable record evidence are insufficient to mitigate concerns raised by his financial circumstances.