



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



In the matter of:)
)
) ISCR Case No. 17-01946
)
Applicant for Security Clearance)

Appearances

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

02/05/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial problems. Clearance is granted.

Statement of the Case

On June 26, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a decision on the administrative (written) record (Answer).

On August 24, 2017, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant eight exhibits for admission into the record. Applicant submitted a response to the FORM (Response). The exhibits accompanying the FORM

¹ The CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

and the documents Applicant submitted with his Answer are admitted into the record. On January 17, 2018, I was assigned the case for decision.²

Findings of Fact

Applicant, 78, is employed as an engineer for a defense contractor. He obtained his undergraduate degree in 1960. He has never married. He completed his security clearance application in 2016. (Item 5) He has been with his current employer since 1967. He has held a security clearance for 55 years. (Item 4)

The SOR alleges 12 delinquent debts that total almost \$138,000. He admits eight delinquent debts totaling approximately \$119,000. (Item 1)

Applicant's reason for the delinquent debts on the SOR stem from the fact that he allowed his nephew and his wife (niece) to use his credit cards. His niece by marriage had a heart condition and came to live with Applicant. She and Applicant's nephew lived with him from 1997 to 2012. They had two children. At one point, Applicant's niece stated that the older children could help with the rent. However, that never happened. The niece used Applicant's credit cards to buy food. Applicant was aware of the use. He started to see high balances and confronted her, but he did not take away the credit cards. His nephew would tell Applicant that his wife's condition would worsen because she would get too stressed without the ability to have the means to pay for food and other items. Applicant's nephew had a low-paying job and did not pay his wife's bills. (Item 4)

Applicant stopped confronting his niece because of her heart condition. He threatened to take away the credit cards, but he continued to allow her to use them. Applicant took out a second mortgage on his home so that he could continue to pay the bills. In 2006, he took out a \$100,000 home equity line of credit. By 2011, Applicant could no longer stay current with all the bills and he incurred delinquent debts. His nephew's wife died of a massive heart attack in 2012. Since her death he has prioritized his bills. He paid off a mortgage that is not alleged in the SOR, and presented a certificate of release. (Response to FORM, attachment) He made extra payments on the second mortgage, and the balance has dropped from \$100,000 to \$82,000. (Response to FORM, attachment).

Applicant's priorities include paying his federal and state taxes, property taxes, primary mortgage, utility bills, car insurance, cable account, living expenses, medical expenses, and house and car maintenance. His credit reports confirm that he has no such debts. He had no financial difficulties until his niece and nephew moved in with him. (Item 8) Since her death, he has paid off his first mortgage, for which he submitted

² On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD-4), revising the Adjudicative Guidelines. The revised adjudicative guidelines are applicable to all security clearance decisions issued on or after June 8, 2017. Accordingly, I have applied the revised adjudicative guidelines (hereinafter "AG"). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

evidence. He also paid two credit cards and enclosed documentation. (Response to FORM) He presented documentation that a \$13,156.00 account to CITI is paid in full. He started payments on that account in 2010. He has a track record of making payments on his accounts. He no longer uses credit cards. He stated that he accepts responsibility for these debts incurred by his late niece, but his plan is a reasonable one under the circumstances.

Applicant's eight debts that he acknowledges on the SOR amount to approximately \$119,000. His latest credit report from 2017 confirms the mortgage paid and other paid accounts. The other accounts alleged in the SOR are collection accounts with no account numbers. They do appear on the 2017 and 2016 credit reports. (Item 6 and 7)

The delinquent debts alleged in SOR 1.a through 1.i are not to be minimized. They are not paid. However, in light of the financial track record that Applicant has that spans a 40-year period or more, it is reasonable to conclude that he is going to pay them after he completes his second mortgage. The circumstances were rather unique and not due to any gambling or excessive living outside his means.

Applicant has worked for his employer since 1967, and has held a security clearance for about 55 years. There are no recorded incidents, and no summary interview in the file to gain more insight.

As of the submission of the case for decision, the delinquent debts in the SOR allegations are not resolved. Applicant's credit reports do not reflect any other delinquent accounts that are not resolved. (Item 4)

Law & 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. 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 make certain that applicants: (a) receive fair notice of the issues, (b) have a reasonable opportunity to address those issues, and (c) are not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In deciding a case, a judge must resolve any doubt raised by the evidence in favor of the national security. AG ¶ 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.

Analysis

Guideline F, Financial Considerations

Applicant incurred delinquent debt when he allowed his nephew and niece who were living with him to use his credit cards. The accounts became delinquent. The presence of delinquent debt can raise the Guideline F security concern, which is explained at AG ¶ 18:

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. . . .

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 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 all the disqualifying and mitigating conditions under Guideline F, including the following pertinent ones:

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

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

AG ¶ 20(a): the behavior happened so long ago, . . . 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. . . .), and the individual acted responsibly under the circumstances; and

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

Applicant's past financial problems were attributable to his compassion for his niece who had severe health issues. She died of a massive heart attack in 2012. Applicant allowed his niece and nephew to live with him. His nephew did not have money to pay bills. Applicant confronted his niece several times, but was afraid of upsetting her and contributing to more heart issues.

Applicant has shown that he has diligently worked all his life and paid his bills. He has paid his primary mortgage and is now paying the second mortgage that he obtained in 2006 to help pay the niece's bills. He prioritized the bills and his credit reports over the years show that he always paid as agreed. He did not simply walk away from his debts. Instead, he responsibly addressed each of his debts. He chose not to file for bankruptcy. His plan is to finish paying the second mortgage and begin to pay the alleged accounts in the SOR. His past financial problems are not attributable to not living within his means. He incurred debt trying to help his niece, her children and his nephew. He made good-faith efforts to resolve his debts. He presented documentation showing that he is current on all his expenses. He has a viable plan to pay his debts.

The unique circumstances giving rise to Applicant's past financial problems do not cast doubt on his current ability and willingness to continue to properly handle and safeguard classified information. Additionally, the manner in which he addressed the debts that he incurred following his niece's death raise favorable inferences regarding his continued suitability. Applicant's present financial situation does not raise a security concern. AG ¶¶ 20(a), 20(b), and 20(d) apply.

After a complete and thorough review of the record evidence, including considering the whole-person factors set forth in AG ¶ 2, I find that Applicant met his heavy burden of proof and persuasion in mitigating the security concerns at issue. Furthermore, he established his eligibility for continued 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.l: For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to continue Applicant's eligibility for access to classified information. Applicant's request for a security clearance is granted.

Noreen Lynch
Administrative Judge