



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-02447
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: Bruce Desimone, Esq.

08/13/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated concerns raised by his incomplete responses to questions on a security clearance application. However, he did not present sufficient evidence to mitigate concerns raised by his financial situation. Clearance is denied.

Statement of the Case

On September 27, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations and personal conduct guidelines. Applicant answered the SOR and requested a hearing.

Applicant's hearing was initially scheduled for May 15, 2018, but at his request, the hearing was rescheduled for May 17, 2018. Applicant testified at the hearing, and Government Exhibits 1 – 15 and Applicant's Exhibits A – E were admitted into the administrative record.¹ The transcript of the hearing was received on June 6, 2018, and the record closed on June 15, 2018.²

¹ Applicant's objection to Exhibit 6 was overruled, but his comments and evidence indicating that someone else filed a tax return using his social security number were considered in assessing the weight to give this portion of the exhibit. See Transcript (Tr.) 8-10, 24-29; Exhibit E at 5.

² Post-hearing correspondence was marked and attached to the record as Appellate Exhibit III.

Findings of Fact

Applicant, 31, is single with no children and resides with his parents in the same home in State A, which he has lived in since he was young. He graduated from college in 2010, and has earned money as a barber since 2000. He worked as a truck driver from 2009 to 2010, and in 2016 submitted his first security clearance application (SCA) in connection with his current employment as a defense contractor.³

Applicant was the victim of identity theft in about 2014. A federal income tax return was filed by a person using Applicant's name and social security number. This other person listed on this fraudulent 2013 federal tax return an address in State B and claimed a married status. State B issued a state tax lien.

Applicant has never lived or worked in State B and has never been married. He contested the state tax lien and State B voided the lien. Applicant also filed the necessary paperwork with the IRS alerting them to the identity theft issue involving the 2013 tax return. He voluntarily provided the DoD with his IRS account transcripts for 2014 – 2016, showing that his tax returns were timely filed. The state tax lien, the false information contained in the 2013 federal tax return, and an allegation that Applicant purportedly failed to timely file his 2015 tax return are referenced at SOR 1.b, and 2.c through 2.e.⁴

Notwithstanding the identity theft issue, Applicant admits ten of the SOR debts, which together total approximately \$50,000. The majority of this debt load is for a 2011 judgment from State A for overpayment of unemployment benefits and delinquent student loans. Applicant's pay is being garnished to satisfy the 2011 judgment and his tax refunds have been intercepted to pay his student loans and other debts. He testified that he made payments in the past on both debts. He also testified that he paid or is making payments on the other admitted SOR debts. He provided no documentation to corroborate his testimony. The debts referenced at SOR 1.a and 1.c – 1.k remain unresolved.⁵

Applicant disputes the \$567 medical debt referenced in SOR 1.i. He explained at hearing that the medical bills he acquired in 2015, when this debt arose, relate to a car accident and should have been paid by the law firm that handled his case. He received a settlement of approximately \$10,000 in 2016 from the car accident. He did not use the settlement money to pay the 2011 judgment, his student loan debt, or any of the SOR debts. He earns approximately \$65,000 a year and lives rent-free, though he does contribute to paying for common household expenses. He has no money in his savings account, but has accumulated about \$8,000 in a 401(k) retirement plan. He has not obtained financial counseling.⁶

In filling out the SCA, Applicant rushed through the form and was careless. He did not list addresses for apartments he shared for a time with ex-girlfriends, past jobs, his

³ Exhibit 1.

⁴ Tr. 24-31; Exhibits 2 – 3; Exhibit 6; Exhibit E.

⁵ Tr. 20-23, 31-37, 44-48, 53, 61-65, 71-72; Exhibit 6; Exhibit 11; Exhibits B – Exhibit E.

⁶ Tr. 38-40, 66-68, 79-80, 83-84; Exhibit 13.

delinquent accounts, and the car accident lawsuit and other non-criminal civil court actions. He freely discussed these matters during the course of the ensuing background investigation and at hearing. He had reported the student loan debts and other financial problems on a declaration for federal employment that he filed in 2013.⁷ His omission of these matters and two tickets he received in 2012 for driving an uninsured vehicle are referenced as security concerns at SOR 2.a, 2.b, and 2.e through 2.h

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 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.

DOHA administrative judges “are creatures of the Directive,”⁸ who derive their authority from the Directive. The Directive also sets forth an administrative judge’s responsibilities and obligations, including the requirement that a judge 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

⁷ Tr. 14-84; Exhibit 1; Exhibit 2.

⁸ ISCR Case No. 17-01213, n. 2 (App. Bd. June 29, 2018).

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. See *also* ISCR Case No. 16-03712 at 3 (App. Bd. May 17, 2018).⁹

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.¹⁰

Analysis

Guideline F, Financial Considerations

The financial considerations security concern 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.

The security concern here is not limited to a consideration of whether persons 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

⁹ 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 or issue. ISCR Case No. 17-02952 (App. Bd. Aug. 3, 2018); ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct or issue 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).

¹⁰ See *generally* ISCR Case No. 11-13626 (App. Bd. November 7, 2013) (discussing predictive nature of security clearance adjudications). See *also Palmieri v. United States*, 2018 U.S. App. LEXIS 20477, * 8 (D.C. Cir. July 24, 2018) (“*Egan* holds that ‘the grant of security clearance to a particular employee, a sensitive and inherently discretionary judgment call, is committed by law to the appropriate agency of the Executive Branch.’ . . . The idea is that ‘an outside non-expert body,’ including a court, is institutionally ill suited to second-guess the agency's ‘[p]redictive judgment’ about the security risk posed by a specific person.”) (citing to and quoting from *Egan*, 484 U.S. 527, 529).

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 Guideline F disqualifying and mitigating conditions, including:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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

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; 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 meant to punish a person for past poor financial decisions. Furthermore, 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 the presence of delinquent debt and showing that they manage their present finances in a manner expected of all clearance holders.¹¹

Applicant presented sufficient evidence to establish AG ¶¶ 20(b) and 20(e) as to the matters alleged in SOR 1.b and 1.i.¹² These allegations are decided for Applicant.

Applicant, however, did not meet his burden of proof and persuasion in mitigating security concerns raised by his accumulation of approximately \$50,000 in delinquent debt, as alleged in SOR 1.a and 1.c – 1.k. His inaction to date in addressing and resolving these longstanding debts raise questions and concerns about his security clearance suitability. Of note, Applicant provided no documentation to corroborate his assertions that he paid or is paying these SOR debts. His payments to date were the result of garnishment and other enforcement actions taken by his overdue creditors to enforce their lawful claims.¹³ The above listed disqualifying conditions apply. No mitigating conditions apply to these SOR allegations.

¹¹ See *generally* ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

¹² Contrast with ISCR Case No. ISCR Case No. 10-02803 (App. Bd. Mar. 19, 2012) (applicant did not provide sufficient evidence to sustain judge's finding that his debts were due to fraud)

¹³ See *generally* ISCR Case No. 15-02585 (App. Bd. Dec. 20, 2016) (reasonable for judge to expect an applicant to present documentary evidence regarding resolution of SOR debts). See also ISCR Case No. 15-05478 (App. Bd. Oct. 2, 2017) (judge erred in accepting applicant's assertions that he had resolved financial issues without corroborating documentary evidence).

Guideline E, Personal Conduct

Conduct involving dishonesty during the security clearance process, such as the deliberate falsification of a security clearance application, raises a serious security concern. See *generally* AG ¶¶ 15, 16(a). Applicant did not exercise the level of care in filling out the SCA that one would expect from a prospective clearance holder. However, such carelessness is not enough to find that a person deliberately falsified his or her responses to questions on a SCA.¹⁴ I note that this was Applicant's first clearance application, and he was fully candid and cooperative during the course of the security clearance process, including regarding the information he did not list on the SCA. Furthermore, he dutifully reported the delinquent student loans and other pertinent matters on a federal form for federal employment several years earlier – a form that is far shorter in length and far less complicated. Additionally, Applicant refuted a number of the falsification allegations that were based on the fraudulent 2013 federal income tax return.¹⁵ This evidence leads me to conclude that Applicant did not deliberately omit the information requested on the SCA.¹⁶ The non-falsification Guideline E allegation about driving an uninsured vehicle in 2012 is insufficient to raise a security concern.¹⁷ Accordingly, the Guideline E allegation is decided for Applicant.

Whole-Person Concept

In addition to the specific adjudicative guidelines, a judge must also take into account factors that are applicable to all cases. These factors are grouped together under the all-encompassing umbrella of the whole-person concept.¹⁸ I hereby incorporate my above analysis and highlight some additional whole-person matters.

Specifically, I considered Applicant's relatively young age when he incurred the debts at issue and that he was the victim of identity theft – a situation that can take years to fully resolve. However, this and the other favorable record evidence are insufficient to mitigate the security concerns raised by his ongoing financial problems. Overall, the record evidence leaves me with doubts about Applicant's present eligibility for access to classified information.¹⁹

¹⁴ See *generally* ISCR Case No. 15-03727 (App. Bd. Sep. 21, 2016) (judge erred in finding that applicant deliberately failed to disclose on his SCA negative financial information because the applicant failed to exercise certain level of care, i.e., investigate his credit history before answering SCA questions).

¹⁵ Tr. 53 ("Department Counsel: All right. On Government Exhibit 6, which is the compilation of your tax transcripts . . . So leaving aside 2013, *because we're not sure that's you . . .*") (emphasis added).

¹⁶ See *generally* ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017) (judge erred in rejecting applicant's plausible explanation in finding against him under Guideline E). See also ISCR Case No. 15-06990 (App. Bd. Jan. 11, 2018) (reversing adverse Guideline E decision).

¹⁷ Contrast with ISCR Case No. 12-10889 (App. Bd. May 8, 2014) (affirming adverse decision based on three decades of personal conduct that raised concerns about the person's eligibility).

¹⁸ See AG ¶ 2. See also SEAD-4, ¶ E.4; Directive, ¶ 6.3.

¹⁹ I also considered the exceptions listed in SEAD 4, Appendix C, but none are warranted in this case.

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 – 1.k: Against Applicant

 Subparagraphs 1.b and 1.l: For Applicant

Paragraph 2, Guideline E (Personal Conduct): **FOR APPLICANT**

 Subparagraphs 2.a – 2.h: For 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