



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



In the matter of:)
)
 REDACTED) ISCR Case No. 17-02740
)
 Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, 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 August 21, 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 October 16, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant seven exhibits, pre-marked Items 1 – 7, which the Government offers for admission into the record. Applicant received the FORM on October 20, 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 any objections or submit a response. Accordingly, without objection, Items 1 – 7 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, 47, has been employed as a software engineer by a federal contractor since April 2012. He submitted a security clearance application (SCA) for his job in October 2015. In response to questions on the SCA about his employment history, Applicant reported working for Fannie Mae from 2002 to 2007. He stated that he left his employment with Fannie Mae because of “differences of opinion.” (Item 3 at 11-12) He certified that his “statements on this form [the SCA] . . . are true, complete, and correct to the best of my knowledge and belief and are made in good faith.” He further stated that he understood “intentionally withholding, misrepresenting, or falsifying information may have a negative effect on my security clearance . . . up to and including denial or revocation of my security clearance.” (Item 3, Signature Page)

In September 2016, Applicant was asked by a security clearance investigator about the circumstances that led him to leave his job with Fannie Mae. Applicant admitted to the investigator that he had been fired by Fannie Mae for sexual harassment. (Item 7)¹

Applicant did report on his SCA, in response to questions about his financial record, that he defaulted on a number of credit cards. He stated on the SCA that he had consulted for about 15 minutes with a credit counseling service. (Item 3 at 30)

During the September 2016 security clearance interview, Applicant was asked about his delinquent debts, including the tax debts, judgments, and collection accounts listed on the SOR. (Item 7) He provided documentation with his Answer showing that in September 2017 he satisfied the tax debt for unpaid state income taxes for 2007 and 2008 referenced in SOR 1.a and 1.b. He claimed in his Answer to be in the process of resolving the judgments from 2010 and 2011, which total over \$15,000 and are listed in SOR 1.c – 1.e. He further claimed that he would satisfy the 2010 judgment for \$2,100 and the \$1,600 collection account referenced in SOR 1.d and 1.h, respectively, by the end of December 2017. He provided no documentation to corroborate his claims. He also provided no documentation to substantiate the basis of his dispute of the two collection accounts listed in SOR 1.f and 1.g, which are listed on his credit reports. He did submit documentation reflecting a favorable credit score (over 660) and timely payments on his current credit card accounts. (Item 2)

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

¹ The misleading information Applicant provided on his SCA about his employment history was considered for the limited purpose of assessing Applicant’s mitigation case and whole-person factors. *See infra*. n. 2.

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.

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.

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).

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.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(b): unwillingness to satisfy debts regardless of the ability to do so;

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

AG ¶ 19(f): . . . failure to pay annual Federal . . . 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;

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.")

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;

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.

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.

Applicant's financial problems date back to 2007, after he was fired by his former employer for misconduct. He then defaulted on several credit cards and failed to pay his state income taxes for two consecutive years. The disqualifying conditions listed at AG ¶¶ 19(a) through 19(c), and 19(f) apply.

On the positive side, Applicant recently addressed his state tax debt. However, the timing of that action (i.e., after the SOR was issued) suggests that he did so as a means to obtain a clearance, not out of a sense of obligation to repay his debts. Moreover, despite gainful employment as a federal contractor since 2012, Applicant did not present documentary evidence showing he has addressed and resolved the other SOR debts, including over \$15,000 in judgments from 2010 and 2011. The evidence Applicant did submit is insufficient to outweigh the security concerns raised by his financial situation. None of the above-listed mitigating conditions fully apply. Overall, the record evidence leaves me with serious doubts about Applicant's ability and willingness to follow rules and regulations for the proper handling and safeguarding of classified information.⁵

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.”)

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.

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.h: **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