



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-02784
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2018

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 24, 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 November 9, 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 was given 30 days to raise an objection to the material offered by Department Counsel and submit her own evidence. She did not file an objection or submit a response. Accordingly, without objection, Items 1 – 8 are admitted into the record.

On April 13, 2018, I was assigned the case and then reopened the record to provide the parties an opportunity to submit updated information and evidence. Department Counsel submitted a recent credit report before the May 4, 2018 deadline for submission of new matters. Applicant submitted an email on May 14, 2018, further

explaining her financial situation. These matters were marked Items 9 and 10, respectively, and are admitted into the record. The record closed on May 15, 2018.¹

Findings of Fact

Applicant, 39, earned her associate's degree in 2004. Her husband died in 2002 from cancer. She has four children, ranging in ages from 16 to 25. She has worked as a federal contractor in the security clearance field. From October 2006 to July 2013, she was employed by a federal contractor to conduct record searches for background investigations. She was then unemployed for six months (July to December 2013), before being hired by another federal contractor as a background investigator. She was fired from that position in September 2015 for poor work performance and was then unemployed until December 2015. Applicant has been employed since December 2015 in low-paying jobs, earning about \$25,000 annually.²

In June 2011, Applicant was granted a security clearance in connection with her employment as a federal contractor. That same month, she filed for Chapter 7 bankruptcy. Applicant reported the 2011 bankruptcy on her recent security clearance application, noting financial problems related to raising her four children on her income alone, health problems, and mortgage issues as contributing factors leading to her bankruptcy filing. She reported on the application that the bankruptcy involved approximately \$350,000 in debt. The petition that Applicant filed with the bankruptcy court listed liabilities totaling over \$600,000, which included a \$69,000 home equity line of credit and \$53,000 in unsecured debt. Schedule J of Applicant's bankruptcy petition reflects that her monthly expenses exceeded her monthly income by over \$400. Applicant's debts, including the judgment listed in SOR 1.ff, were discharged in bankruptcy in September 2011.³

In May 2016, Applicant submitted a security clearance application. She reported the 2011 Chapter 7 bankruptcy and numerous other delinquent debts that she incurred following the bankruptcy discharge.⁴ The (amended) SOR lists 31 delinquent debts totaling approximately \$20,000. The 14 non-medical SOR debts total about \$10,000. Applicant admits all the SOR debts, except 1.m, 1.n, and 1.ee. These three disputed debts are listed on Applicant's credit reports.⁵ Applicant claims she obtained financial counseling and recently started a well-paying job that will allow her to pay her debts.⁶ She did not provide any documentation showing the resolution of any of the SOR debts or to substantiate the basis of her dispute.

¹ Appellate Exhibit I (confirmation of jurisdiction and correspondence).

² Items 2, 3, 5, and 10.

³ Items 3, 5, and 8. SOR 1.ff is listed on Applicant's bankruptcy petition (Item 8) and an August 2016 credit report (Item 4 at 7) reflects that the judgment was discharged in bankruptcy. The SOR is amended to conform to the evidence by deleting (striking) SOR 1.ff.

⁴ Item 3.

⁵ SOR 1.m and 1.n are listed on Item 9 at *Collections*, number 5, and *Trade Lines*, number 19, respectively. SOR 1.ee, a 2015 judgment, is listed in Item 4 at 6.

⁶ Item 10.

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.

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. See *also* ISCR Case No. 16-03712 at 3 (App. Bd. May 17, 2018).⁷

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,

⁷ 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).

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. See 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 ¶ 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; 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.⁸

Applicant failed to meet her burden of proof and persuasion. Some matters largely beyond her control negatively impacted her finances. However, she accumulated a sizeable amount of delinquent debt after receiving a Chapter 7 discharge in 2011 and provided no evidence of action on her part to address her delinquent accounts. Her financial situation does not appear under control. The disqualifying conditions listed at AG ¶¶ 19(a) and 19(c) apply. AG ¶¶ 20(b) and 20(c) have some limited applicability, but are insufficient, even when considered with the favorable whole-person matters raised by the evidence,⁹ to mitigate the security concern at issue. Overall, the record evidence leaves me with doubts about Applicant's eligibility for 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):	AGAINST APPLICANT
Subparagraphs 1.a – 1.ee, and 1.gg:	Against Applicant
Subparagraph 1.ff:	Deleted

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

⁸ See *generally* ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁹ See *generally* AG ¶ 2. I also considered the exceptions listed in SEAD 4, Appendix C, but Applicant did not provide sufficient evidence that would warrant application of any of the exceptions in Appendix C.