



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-03397
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, 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 December 28, 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 February 12, 2018, 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 submitted a Response to the FORM. With his Response, Applicant submitted a number of documents for the record. Applicant's Response and the accompanying documents were collectively marked Item 9. The exhibits offered by the parties, Items 1 – 9, are admitted into the record without objection.

On May 10, 2018, I was assigned the case. Subsequently, I received written confirmation that Applicant remains sponsored for a security clearance.¹ Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

Findings of Fact

Applicant, 56, is a naturalized U.S. citizen. He served in the U.S. military from August 1979 to October 2001. He held a security clearance while in the military. He has been working as a federal contractor since 2002. He has experienced periods of short-term unemployment and underemployment between contracts.²

In February 2015, Applicant submitted a security clearance application. He reported the existence of six delinquent credit card accounts.³ He admits the six SOR debts that are in collection or charged off, and which together total over \$50,000. Applicant claims that he is on a payment plan for some of the SOR debts and will look into addressing the others. He submitted a statement for the debt listed in SOR 1.b, a \$21,500 collection account, reflecting a one-time payment of \$200 in August 2015. He did not provide any further supporting documentation reflecting any other payments or other responsible action to address the debts referenced in SOR 1.a – 1.f.⁴

In March 2017, Applicant had his security clearance interview. He discussed with the investigator his delinquent debts, as well as his failure to file his 2013 – 2015 federal and state tax returns. He promised to file his overdue returns in April 2017, when he planned to file his 2016 tax returns. He claims to have now filed all overdue tax returns. He provided a document showing that he is on an installment agreement with the IRS to resolve his past-due federal taxes. He is still in the process of resolving his state tax debt.⁵

Applicant attributes his financial problems to the financial support he provided his girlfriend and her family in their time of need. Notably, Applicant helped pay for medical and funeral expenses for his girlfriend's mother after she became terminally sick. He also provided financial support to his girlfriend and her family to rebuild their homes following a natural disaster.⁶ Applicant first mentioned these matters as contributing factors to his financial situation when he submitted his security clearance application in February 2015. He claims to have received financial counseling.⁷

¹ Appellate Exhibit I.

² Items 4, 5, and 9.

³ Item 4 at 52-58.

⁴ Items 1 and 2.

⁵ Items 2, 5, and 9. SOR 1.g and 1.h are amended to reflect the correct tax years Applicant failed to timely file his tax returns, specifically, 2013 – 2015.

⁶ Items 2, 4, 5, and 9.

⁷ Item 4 at 53; Item 9.

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).⁸

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,

⁸ 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 ¶ 19(f): failure to file . . . annual Federal, state, or local income tax as required;

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.

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.⁹

Additionally, a person 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.¹⁰ An administrative judge should closely examine the circumstances giving rise to a person's tax-related issues and his or her response to it. A judge must also carefully scrutinize a person's claim of financial reform and weigh it against the person's lack of judgment and reliability in failing to timely file his or her income tax returns or pay their taxes.¹¹

Applicant failed to meet his burden of proof and persuasion. Some matters largely beyond his control negatively impacted his finances. However, he did not provide sufficient evidence showing responsible action in addressing the over \$50,000 in SOR debts. He reported these debts or, at least the majority of them, on the security clearance application he submitted in 2015. The only documented action Applicant has taken to resolve these consumer-related debts is one \$200 payment in August 2015. Moreover, although Applicant receives some credit for entering into an installment agreement to resolve his federal tax debt, the evidence he provided is insufficient to mitigate the security concerns raised by his failure to file his tax returns for three successive years and the unresolved state tax issue.¹² AG ¶¶ 19(a), 19(c), and 19(f) apply. AG ¶¶ 20(b) and 20(f) have some limited applicability, but are insufficient, even when considered with the favorable whole-person matters raised by the evidence,¹³ to mitigate the security concern

⁹ See *generally* ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

¹⁰ 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).

¹¹ 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).

¹² See ISCR Case No. 17-01382 (App. Bd. May 16, 2018) (Board reversed favorable decision despite the presence of a number of significant matters beyond applicant's control that negatively impacted his finances and evidence all overdue tax returns were filed, because, in large measure, the unresolved security concerns raised by applicant's failure to file his tax returns over a number of successive years).

¹³ See *generally* AG ¶ 2. I specifically considered Applicant's military service, as well as the honesty and candor he exhibited during the security clearance process.

at issue. Overall, the record evidence leaves me with doubts about Applicant's eligibility for access to classified information.¹⁴

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

¹⁴ I also considered the exceptions listed in SEAD 4, Appendix C, including whether the grant of a clearance subject to additional security measures would sufficiently mitigate the security concerns at issue. However, Applicant did not provide sufficient evidence to warrant application of any of the exceptions in Appendix C.