



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-03858
)
 Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: Catie E. Young, Esq.

12/10/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by his past financial trouble. He moved to a high-cost area of living upon a change in military assignments. He was unable to keep pace with ever increasing expenses, primarily his mortgage, and accumulated a significant amount of delinquent debt. After negotiating a modification of his mortgage, Applicant reached out to his overdue creditors and either paid or is paying his debts. He has received financial counseling and his past financial trouble no longer raises concerns about his judgment, reliability, or trustworthiness. Clearance is granted.

History of the Case

On September 2, 2014, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that his circumstances raised security concerns under the financial considerations guideline.¹ On October 10, 2014, Applicant answered

¹ This action was taken 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 Adjudicative Guidelines implemented by DOD on September 1, 2006.

the SOR, submitted six attachments (Atch. 1 – 6), and requested a hearing to establish his eligibility for continued access to classified information (Answer).²

On June 18, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed to hearing. After conferring with the parties, Applicant's hearing was scheduled for and held on September 24, 2015. See Hearing Exhibit (Hx.) I, scheduling correspondence.³

At hearing, Department Counsel offered four exhibits (Ex. 1 – 4).⁴ Applicant testified and offered 21 exhibits (Ex. A – U). He requested additional time post-hearing to supplement the record. I granted his request, and he timely submitted four additional exhibits (Ex. V – Y).⁵ All exhibits, whether submitted pre-hearing, at hearing, or post-hearing, were admitted into evidence without objection. The hearing transcript (Tr.) was received on October 2, 2015, and the record closed on October 13, 2015.

Findings of Fact

Applicant is married and is the father of four children. He is currently pursuing a doctorate in accounting. He has been with his current employer for over six years. He has received a number of promotions in the past few years, reflecting his work performance and ability to secure additional business for his employer. He is also a reserve member of the U.S. military. He rose to the rank of sergeant before being selected for officer training school and earning a commission as an officer. He has received successive promotions in the military over the years, attaining his current rank of lieutenant colonel. He has held a clearance continuously since being commissioned as a second lieutenant almost twenty years ago. (Tr. at 26-35, 62-65; Ex. 1; Ex. M – S)

Applicant's past financial problems relate to his move in 2005, which was triggered by a new military assignment. He moved from a relatively low-cost area of living to a high-cost area of living. For instance, his monthly mortgage payments nearly doubled, going from \$2,600 to approximately \$5,000. Initially, after the move, Applicant's wife did not have a job. He was also paying to maintain two households, as his old home did not sell for several months after the move. Although Applicant was able to meet the mortgage payments on his new home on his salary alone for some time, he started relying on credit cards to pay some recurring monthly expenses,

² Upon a review of the transcript (Tr.), two documents were incorrectly marked as Atch. 4. I have remarked them as Atch. 4 and 4A, and they are both admitted into the record. See Tr. at 21 – 24.

³ The Government declined the opportunity to explain the almost yearlong delay in processing Applicant's case for hearing. See Hx. II, Government's legal brief at 4, claiming that such inquiry is "an unauthorized invasion into the Government's attorney work product." Thus, the record is silent on the issue. However, as Applicant did not claim any prejudice from the delay and the delay appears to have worked in his favor, I find that he suffered no apparent prejudice. ISCR Case No. 08-10170 at 2 (App. Bd. Jul. 8, 2011).

⁴ The only credit report submitted by the Government, Ex. 3, is from 2013.

⁵ Applicant's post-hearing exhibits were remarked with the letters noted above. The parties' exhibit lists are included in the record as Hx. III – V. Department Counsel's position regarding Applicant's post-hearing submission is included in the record as Hx. VI.

including education-related expenses for one of his children who suffers from a learning disability. (Tr. at 35-44, 71-74)

Applicant's financial situation worsened in 2010, when the interest rate on his adjustable rate mortgage rose and his new monthly mortgage payments increased to \$6,200. By 2012, Applicant had fallen behind on his mortgage and other financial obligations. (Tr. at 35-44, 50-51) He testified that, at that point, "everything was just spiraling out of control." (Tr. at 51) Applicant and his wife contemplated filing for bankruptcy and walking away from the mortgage on their new home, whose value had plummeted and currently is worth about \$100,000 less than what they originally paid for it. (Tr. at 60, 78-79) Ultimately, Applicant decided to work with his overdue creditors to resolve his past-due debts because, as he explained at hearing:

We thought about it [filing for bankruptcy], but then again, I am an officer and I have to be responsible for my obligations. The same thing with the house. We thought about walking away. A lot of people did. A lot of people let their houses go into foreclosure, but we decided not to. We would just stick it out, tough it out and just ride it out. (Tr. at 58)

Since 2012, Applicant has made significant strides in putting his financial house in order. First, he reached out to his lender and negotiated a mortgage modification. He now has a 30-year mortgage, with a fixed 4.5% interest rate. He has been paying his monthly mortgage payments on time and the mortgage is current. (Tr. at 37-42, 54-55; Ex. I)⁶ Second, Applicant negotiated an installment agreement with the IRS to resolve his past-due taxes. He has been repaying his federal tax debt on a consistent basis for the past 18 months. He has timely filed his tax returns and paid the amount of taxes owed, if any, for the past two years. (Tr. at 55-58, 67-69; Ex. J)⁷ Third, Applicant contacted his other overdue creditors and resolved his debts, to include those listed on the SOR. He submitted documentary proof to substantiate his testimony of resolving the SOR debts. (Tr. at 35-52; Ex. B – G; Ex. U – X)⁸

Applicant disclosed his past-due debts on his recent security clearance application. He has received financial counseling, learned how to budget, and submitted a detailed budget and plan to remain financially secure. He and his wife contribute to their employer-sponsored 401(k) accounts and, combined, have over \$100,000 in

⁶ Applicant's mortgage is referenced at SOR 1.g.

⁷ Applicant's accrual of a sizeable tax debt because of his failure to timely pay his federal taxes over a number of years has a "direct bearing" on his eligibility. ISCR Case No. at 3 (App. Bd. Oct. 9, 2015). However, unlike other cases, Applicant presented substantial evidence of financial reform and rehabilitation mitigating the heightened security concerns arising from his past tax debt. Specifically, Applicant reached out to the IRS to resolve his tax debt, provided documentation of consistent monthly payments to resolve the tax debt over a lengthy period of time, reformed his behavior that led to the tax debt in the first place and has timely paid his tax obligation over the past several years. He also addressed other debts incurred during a period of financial difficulty.

⁸ In case of appellate review, the following is provided for ease of reference regarding the non-mortgage and non-tax related SOR debts: 1.a (Tr. at 35-37, 42-44; Ex. B – C); 1.b (Tr. at 44-46; Ex. D); 1.c (Tr. at 46-50; Ex. U – X); 1.d (Tr. at 50-52; Ex. F); 1.e (Tr. at 52-53; Ex. G); and 1.f (Tr. at 53-54; Ex. H).

retirement savings. Applicant timely pays his mortgage and other monthly expenses. He estimates that, after paying recurring monthly expenses, his family has approximately \$2,000 a month in disposable income to use for emergencies and pay debts. He has not incurred any other past-due debts. (Tr. at 59-66, 76-83; Ex. 1; Ex. K – L; Ex. Y) Numerous individuals who have known Applicant both professionally and socially for years submitted letters attesting to his professionalism, honesty, and reliability. (Ex. T)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants 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.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). 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.

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.

An administrative judge must ensure that due process proceedings are conducted “in a fair, timely and orderly manner.” Directive ¶ E3.1.10. Judges are required to make certain that an applicant “received fair notice of the issues raised, had a reasonable opportunity to litigate those issues, and was not subjected to unfair surprise.” ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014)

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the paramount importance of protecting national security in all suitability determinations, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

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

The potential security concern under this guideline is explained at AG ¶ 18:

Failure or inability 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 information. . . .

Applicant's past financial problems raise the financial considerations concern. The record evidence also raises the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts;" and 19(c), "a history of not meeting financial obligations."

The following mitigating conditions were potentially raised by the evidence:

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;

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, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant's past financial problems started when he moved to a high-cost area of living when he received orders for a new military assignment. His decision to attempt to maintain for his family the same standard of living they had previously enjoyed is understandable, but not a matter outside of his control. His wife's past unemployment and his child's learning disability were matters beyond his control that impacted his financial situation. AG 20(b) partially applies.

Applicant did not ignore his financial obligations. Instead, he negotiated a modification of his mortgage, and then methodically and systematically addressed each one of his outstanding debts. He has received financial counseling and put his financial house in order. His past financial trouble no longer raises concerns about his judgment, reliability, or trustworthiness. AG ¶¶ 20(a) , 20(c), and 20(d) fully apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of clearance holders.⁹ Applicant met his burden of persuasion.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been upfront and candid about his financial situation since the start of the security clearance process. Furthermore, he has maintained a security clearance and handled sensitive information, in and out of uniform, without issue for nearly twenty years. This favorable record evidence and Applicant's responsible action in addressing his finances mitigates the financial considerations security concern.

A security clearance determination is not intended to punish an individual for past conduct or circumstances. Instead, these decisions serve as predictive judgments about an individual's security suitability, where the individual's past conduct is the best indicator of future behavior.¹⁰ Here, Applicant has demonstrated through the manner in which he responsibly addressed his financial situation that he possesses the requisite good judgment, reliability, and trustworthiness to continue to be entrusted with classified information. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations) **FOR APPLICANT**

Subparagraphs 1.a – 1.h: **For Applicant**

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

¹⁰ ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013). See also, ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).

Conclusion

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

Francisco Mendez
Administrative Judge