



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-01731
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelly, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the accumulation of delinquent debt. He took action to resolve his financial situation by filing for Chapter 13 in 2011. He has been repaying his debts for four years through a confirmed Chapter 13 plan. Clearance is granted.

History of the Case

On September 27, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a determination based on the

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

administrative (written) record. Department Counsel did not move for a hearing within 20 days of receipt of Applicant's Answer.²

On October 15, 2015, Department Counsel prepared his written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings, Applicant's security clearance application (SCA), a summary of his security clearance background interview, bankruptcy petition, 2012 and 2015 credit reports, and e-mail communication between the parties. These matters were admitted into the record, without objection, as Exhibits 1 – 7.

On February 11, 2016, Applicant filed his response to the FORM (Response). The Response was marked Exhibit (Ex.) 8 and, without objection, admitted into the record.³ On April 12, 2016, I was assigned Applicant's case.

Findings of Fact

Applicant, who is in his early fifties, is married and has a teenage stepchild. He served in the U.S. military from 1981 to 2002. Applicant's early military service was marred by alcohol abuse, which he claims contributed to his commission of a sexual assault on his former wife's niece, who was a toddler at the time. Applicant pled guilty to the crime. He reports being sentenced to less than 30 days in jail and probation for a month. He also reports receiving alcohol treatment through the military. The record is devoid of any independent evidence regarding this criminal conviction and does not reflect any other alcohol or criminal conduct issues.⁴

Applicant has been employed as a federal contractor since retiring from the military. He has been employed full time, except for a five month period in 2005. He has been employed as a logistics analyst with his current employer since August 2005. He earned a bachelor's degree in 2010. He has held a security clearance for over 10 years.

In October 2012, Applicant submitted his most recent SCA. He disclosed that he had not filed or paid his federal and state income taxes for 2010 and 2011. He also disclosed a number of past-due debts, including a substantial judgment. He also reported trying to resolve his financial situation through a debt consolidation program, but one of his major creditors refused to participate. He was then advised to file for bankruptcy. He filed a Chapter 13 bankruptcy petition in December 2011. His Chapter 13 bankruptcy plan was confirmed in June 2012. He has been paying his debts, including his past-due taxes and the two major debts listed in the SOR, through the Chapter 13 plan for four years. He submitted documentation reflecting consistent

² See Directive, Enclosure 3, ¶ E3.1.7.

³ Applicant's acknowledgment that he received the FORM and Department Counsel's submission noting the Government had no objection to Ex. 8 are included in the record as Appellate Exhibit I.

⁴ Applicant's past alcohol and criminal matters were not alleged as a security concern in the SOR.

payments for the past six months. He has paid nearly \$45,000 into the Chapter 13 plan with no past-due amount owed. (Ex. 8.)

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 for a security clearance, 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.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is 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 difficulty at times in making suitability determinations and the paramount importance of protecting national security, 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.

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 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's financial problems raise the financial considerations security concern. The record evidence establishes the disqualifying conditions at AG ¶¶ 19(c), "a history of not meeting financial obligations;" and 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

Applicant bears the burden of mitigating the security concerns raised by the evidence. The financial considerations guideline lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

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(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 issues, notably, his failure to file and pay his taxes, raise a heightened security concern and places upon him a heavy burden. Although Applicant did not explain the underlying circumstances that led to his past financial problems, he took control of his finances in late 2011 by filing for Chapter 13 bankruptcy. He had a confirmed Chapter 13 plan before submitting his SCA, and has been paying his debts per the terms of a court-approved repayment schedule. The record does not reflect any further delinquencies or financial issues that call into question Applicant's finances or overall eligibility. AG ¶¶ 20(a), (c), and (d) apply.

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 factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been candid about his past financial situation and has held a security clearance for over 10 years. Based upon the record evidence, Applicant mitigated concerns raised by his past financial circumstances.⁵

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)	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant

Conclusion

In light of the circumstances presented by the record in this case, financial considerations security concerns are mitigated. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

⁵ A security clearance decision should be based on the most recent and accurate information available regarding an applicant's eligibility. In this case, the background investigation was completed in 2012, or three years before the DOD CAF adjudicated the case and issued an SOR. The SOR does not allege Applicant's past serious criminal misconduct and the evidence submitted with the FORM provides neither context nor detail beyond Applicant's own, potentially self-serving comments regarding the incident. Under the Directive, an administrative judge does not have the authority to order a new investigation or the *sua sponte* discretion to convene a hearing to inquire about an individual's current circumstances. Instead, judges must remain fair and impartial and decide an individual's eligibility based on the record evidence, not on speculation or conjecture. See, e.g., ISCR Case No. 14-01490 at 4 (App. Bd. Apr. 15, 2016) (judge erred in finding favorable matters without evidentiary foundation in the record.)