



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



In the matter of: REDACTED Applicant for Security Clearance)))))	ISCR Case No. 14-03841
---	-----------------------	------------------------

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant, a military spouse and prospective employee of a Defense contractor, mitigated security concerns raised by his past financial issues. He left a well-paying job when his spouse received military orders transferring her overseas. He was unable to secure employment while overseas and was unable to pay the debts he had incurred before moving overseas. Upon returning to the United States, the three-year gap in employment resulting from the overseas move and the state of the economy hindered his ability to find a job. He submitted documentation of satisfying his largest outstanding debt, a \$10,000 student loan account, and is addressing the remaining debts that he incurred while unemployed. His current financial situation does not raise concerns about his ability to handle and safeguard classified information. Clearance is granted.

History of the Case

On April 22, 2015, 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 Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

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*

On June 18, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed to hearing. Applicant's hearing was scheduled for and held on August 14, 2015. See Hearing Exhibit (Hx.) II, scheduling correspondence.²

At hearing, Department Counsel moved to withdraw allegation 1.e and, without objection, the motion was granted. Transcript (Tr.) at 16-17. Department Counsel offered four exhibits (Ex. 1 – 4).³ Applicant testified and also offered four exhibits (Ex. A – D). He requested additional time post-hearing to supplement the record. I granted his request, and he timely submitted two additional exhibits (Ex. E and F).⁴ All exhibits were admitted into evidence without objection. The hearing transcript was received on August 20, 2015, and the record closed on September 4, 2015.

Findings of Fact

Applicant is married and is the father of two children. He is a prospective employee for a federal contractor and his wife is an officer in the U.S. military. At the time of the hearing, Applicant's wife was deployed to a combat zone. During their marriage, she has deployed on at least one other occasion to a hostile environment in support of the U.S. mission overseas (Tr. at 26-27)

Applicant started experiencing financial trouble in 2008. Upon being commissioned as an officer, Applicant's wife (who previously served in the enlisted ranks) received orders transferring her to an overseas military base. Before moving overseas with his wife, Applicant was working for a large hospital chain, earning an annual salary of between \$50,000 and \$55,000. He was paying his debts on time. While overseas, Applicant was unable to find a job other than low-paying jobs that were insufficient to cover the cost of child care needed for their then infant children. Applicant and his wife decided that he should stay home and care for the children. Applicant exhausted his savings trying to pay the debts he had incurred before moving overseas, but eventually fell behind on several accounts. (Tr. at 28-33, 61-63; Ex. 2)

Applicant and his family returned to the United States after his wife completed her three-year overseas tour. Applicant found it difficult to find a job because prospective employers questioned the three-year gap in his employment history and the economy was still recovering from the 2008 recession. In 2012, once his children started school, Applicant was able to attain a job with a federal contractor. The job paid \$18 an hour and was a significant distance from his home, resulting in high commuting cost. The next year, Applicant and several other employees were laid off when funding

Clearance Review Program (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by DOD on September 1, 2006.

² Documents establishing that, at the time of the hearing, Applicant was being sponsored for a clearance are included in the record as Hx. I. See ISCR Case No. 05-04831 (App. Bd. Nov. 29, 2006), jurisdiction was lost before the start of the hearing when individual lost job that was sponsoring them for a clearance.

³ Department Counsel's exhibit list was remarked as Hx. IV.

⁴ The Government's position regarding Applicant's post-hearing submission was marked Hx. V.

levels for the projects they were working on were reduced. Over the past two years, Applicant has had several periods of unemployment totaling 9 to 12 months, interspersed with part-time work or temporary employment. His ability to secure full-time employment has been hampered by the needs of his family, because he remains the primary caretaker for his young children. Applicant has an offer from a Defense contractor, who is sponsoring him for a security clearance, for full-time work earning an annual salary of approximately \$58,000. He submitted a security clearance application in December 2013, disclosing his past-due debts. (Tr. at 33-41, 71-72; Ex. 1 - 2)

The SOR lists nine debts totaling approximately \$15,000. The SOR debts are for a past-due student loan account (1.a), a vehicle account (1.f), credit cards (1.b – 1.d, and 1.g – 1.h), cable bill (1.i), and a medical debt (1.j). Applicant submitted documentation that he satisfied his past-due student loan account, totaling over \$10,000. He was able to satisfy his student loan from the income he received from the part-time and temporary work assignments he was able to obtain over the past few years. (Tr. at 41-43; Ex. A) He also submitted documentation to corroborate his testimony of making monthly payments totaling over \$500 towards satisfaction of the delinquent vehicle account. (Tr. at 51-54, 61-63; Ex. A; Ex. D)

Applicant refuted a April 2015 credit report indicating that he has a \$219 collection account for an unpaid cable bill. When Applicant has called to address this debt with the creditor, representatives informed him that they have no record of an account in his name and then reroute his call to several different departments before hanging up. Applicant's frustration in trying to resolve this debt to no avail was patently obvious at hearing, as his body language and tone of voice change dramatically as he testified. Applicant also refuted the alleged medical debt for \$125, because it is an eight-year old bill for his children's medical care that is fully covered by his wife's health insurance through the military. (Tr. at 56-59; Ex. 4)

Applicant's plan now that he has paid his student loan account is to reach out to his overdue creditors and establish payment plans to resolve his four remaining debts. (He established through his testimony and Ex. C that the credit card debts alleged in SOR 1.g and 1.h are for the same debt.) He provided documentation that he has kept in contact with these creditors and, at times, has been able to make some minimal payments on these accounts. He has reduced the balances owed on all four credit card accounts to their current level of less than \$4,000. Applicant testified that he has not accumulated any other past-due debt, which was corroborated by the recent credit report. (Tr. at 43-51, 59-63; Ex. 4; Ex. B - C, Ex. E - F)

Applicant maintains a strict family budget, decreasing expenses wherever possible. For instance, as the son of a parent who was a cook in the U.S. military, he regularly cooks meals at home for himself and his young children. He and his wife have never been late in paying their monthly mortgage payments on a home they have owned for nearly seven years. They also pay their other recurring monthly expenses on time. They have filed their tax returns and paid any taxes owed on time. (Tr. at 64-71)

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 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 accrued delinquent debt when he moved overseas in support of his spouse's military career. Subsequently, he suffered a lengthy period of unemployment and underemployment. Although Applicant has always been willing to pay his debts and submitted evidence that even under the financial strains of the past few years he paid some of his past-due debts, he was unable to pay all his debts. This record raises the financial considerations security concern. It also requires application of the disqualifying conditions at AG ¶¶ 19(a), "inability . . . 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 delinquent debts are a consequence of his selfless sacrifice in support of his wife, which allows her to meet her military obligations. When Applicant's wife received orders reassigning her overseas, he left a well-paying job and moved with his family. He was unable to find a job and ended up becoming the primary caretaker of their children. After returning from overseas, the three-year gap in his employment history and the state of the economy hindered his ability to find a job. He was able to obtain part-time or temporary work, but he has never been able to secure stable

employment paying an equivalent amount to what he earned prior to the overseas move until now with the current job offer. AG 20(b) applies.

Notwithstanding significant periods of unemployment and underemployment, Applicant acted responsibly in addressing his financial situation. First, Applicant made certain not to incur any other debts beyond those he had acquired before moving overseas. He continues to manage his finances in a responsible manner. Second, with the income he received from the part-time work or temporary job assignments he has been able to obtain over the past few years, Applicant paid his student loan account. Of note, this was the largest of Applicant's outstanding debts and he paid well over \$10,000 to satisfy the debt. Third, after satisfying the student loan debt, Applicant reached out to his other creditors and started to address these debts. His plan is to pay the delinquent vehicle loan and then address the remaining debts. He has already paid \$500 on the vehicle debt. He demonstrated a clear commitment (not just words or promises) to follow through with his plan to resolve his debts. AG ¶¶ 20(a), 20(c), and 20(d) also 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 clear evidence 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. See *generally*, ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

Although Applicant still has some past-due debt, he has resolved the debts he could within his means. He also presented a reasonable plan and a commitment to address his remaining debts. Furthermore, he manages his finances in a responsible manner and can be entrusted to handle other obligations in a similar fashion. In short, Applicant met his burden of persuasion. See ISCR Case 14-00504 (App. Bd. Aug. 4, 2014), where Board reversed judge's adverse decision because, despite the lack of clear evidence regarding the status of some of the SOR debts, the individual provided evidence of a track record of debt repayment, a plan to resolve their financial situation, and a demonstrated commitment to pay the remaining debts.

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).⁵ I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been honest about his financial situation since the start of the security clearance

⁵ The non-exhaustive list of factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

process. Furthermore, the support he has provided his spouse, which has allowed her to pursue her military career and, by extension, supported the efforts of the United States around the globe speaks favorably about his character. This favorable record evidence and Applicant's responsible action in addressing his financial situation mitigates the financial considerations security concern.

A security clearance determination is not intended to punish a person for past conduct or circumstances. Instead, these decisions serve as predictive judgments about an individual's security suitability, where the person's past conduct is the best indicator of future behavior.⁶ Here, Applicant has demonstrated through his past conduct that he possesses the requisite good judgment, reliability, and trustworthiness to be entrusted with classified information. Overall, the record evidence leaves me with no questions or doubts about Applicant's 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.d and 1.f – 1.j:	For Applicant
Subparagraph 1.e:	Withdrawn

Conclusion

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

Francisco Mendez
Administrative Judge

⁶ 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).