



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-04044
)	
Applicant for Security Clearance)	

Appearances

For Government:
 Bryan Olmos, Esq., Department Counsel
 Braden Murphy, Esq., Department Counsel

For Applicant: *Pro se*

09/24/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant’s accumulation of over \$15,000 in delinquent debt raises concerns about his continued eligibility for access to classified information. He failed to present evidence of having taken responsible action to address his past-due debts. He also failed to establish that his finances are under control. Clearance is denied.

Procedural History

On February 4, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant’s circumstances raised security concerns under the financial considerations guideline.¹ On February 26, 2015, Applicant answered 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 implemented by the Department of Defense on September 1, 2006.

SOR and requested a hearing to establish his continued eligibility for access to classified information. (Answer)

On May 12, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for July 23, 2015.² The hearing was convened as scheduled.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 – 3 in their case-in-chief. Applicant testified and offered Applicant's Exhibits (Ax.) A – B. These exhibits were admitted into evidence without objection. Department Counsel offered Gx. 4 in rebuttal, but it was not admitted into evidence because it was cumulative with other evidence already admitted. The hearing transcript (Tr.) was received on July 30, 2015.

Findings of Fact

Applicant, currently single, has three adult children and a grandchild that he financially supports. He is a high school graduate and has attended college, but has not received a college degree. He is a federal contractor and has been with his current employer since 1998. He earns between \$75,000 and \$80,000 annually from his primary job. He also has a part-time job from which he earns about \$10,000 yearly. He testified that, after paying his recurring monthly expenses, he has about \$1,500 in discretionary monthly income to pay debts and unexpected expenses. He has held a security clearance since about 2008. (Tr. at 25-29, 50-51; Gx. 1)

Applicant admits 11 of the 13 SOR debts. These 11 delinquent debts together total over \$15,000. The 11 admitted SOR debts range in amounts from a \$55 collection account (1.m) to a 2009 judgment for \$13,000 (1.h). Applicant has not satisfied any of the admitted SOR debts. He contacted some of his overdue creditors shortly before the hearing and purportedly made arrangements to satisfy some of his past-due debts, but did not submit documentation to corroborate his claims. (Tr. at 33-36)³

The largest SOR debt is for a \$13,000 judgment arising from a car accident. Applicant did not have car insurance at the time of the accident, and ignored summonses and court notices regarding the legal proceedings that eventually led to the issuance of the judgment in 2009. He either agreed or was ordered to pay \$125 per month until the judgment was satisfied, but stopped making the required monthly payments in 2014. He could not explain why he stopped making the required monthly payments. The 2009 judgment remains unsatisfied. (Tr. at 36-43)

² See Hearing Exhibit (Hx.) I (prehearing correspondence and scheduling order).

³ Applicant denies SOR debts 1.g (the original amount owed for the 2009 judgment) and 1.l (a \$118 music club collection account that is also listed at 1.k). Although Applicant did not present documentation to substantiate his testimony, his explanation is credible, reasonable, and consistent with the other record evidence. Accordingly, SOR 1.g and 1.l are decided in his favor. However, Applicant's testimony disputing the debt alleged in SOR 1.a. is contradicted by the record evidence. *Compare*, Tr. at 48-49, *with*, Gx. 2 – 3. Furthermore, Applicant admitted this debt in his Answer and, thus, bore the burden of presenting evidence to refute, explain, or mitigate the debt. He failed to do so.

Applicant readily admits that he has a poor track record in repaying his past-due debts. For instance, he testified that he owed back taxes for 2008 through 2012 and did not follow through with an IRS repayment agreement. He testified that he satisfied his past-due federal taxes when his tax refunds were intercepted by the IRS. (Tr. at 52-56)

Applicant presented no documentary evidence of receiving financial counseling. He claims to have read books to improve his financial situation. (Tr. at 45) He could not explain why with such a significant amount of discretionary monthly income he had not resolved any of his past-due debts. (Tr. at 50-51)

Applicant presented documentation that his mother passed away in 2010, and he was appointed to administer her estate. (Ax. A – B) None of the SOR debts relate to his mother's death or the administration of her estate.

Applicant submitted a security clearance application (SCA) in January 2013. He disclosed on his SCA the 2009 judgment, as well as a \$10,000 delinquent debt resulting from the repossession of his car. He satisfied the deficiency balance owed for the repossessed car through wage garnishment. (Gx. 1 at 27-28). Applicant stated in his application that he had no one to blame but himself for his poor financial situation. He went on to state: "I am on the road to financial freedom, so I am working on my delinquencies." (Gx. 1 at 30). He has not resolved any of the 11 admitted SOR debts, to include the \$55 collection account (SOR 1.m). At hearing, Applicant promised to change the manner in which he handles his finances going forward. (Tr. at 51)

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.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

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 531.⁴

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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to 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.

Thus, the financial considerations security “concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts.”⁵ The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

⁴ 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.”).

⁵ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See also ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

Applicant's accumulation of over \$15,000 in delinquent debt raises the financial considerations security concern. The record evidence establishes the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The guideline also 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(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;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's debts were not incurred under unusual circumstances or due to matters beyond his control. His debts are numerous, substantial, and ongoing. When he submitted his SCA, Applicant was apparently aware that his past-due debts might raise a security concern. In the 30 months that have passed since the submission of the SCA, Applicant took no documented action to resolve any of his past-due debts. Applicant's failure to act is puzzling considering his testimony that he has approximately \$1,500 a month in discretionary income. Instead of paying his debts, Applicant stopped making the required \$125 monthly payments on the 2009 judgment *after* submitting his SCA. Although I do not question Applicant's sincerity regarding his desire to change the manner in which he manages his finances, he has yet to take any concrete action, to include receiving financial counseling, to improve his financial situation. Accordingly, none of the mitigating conditions 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 those granted access to this nation's secrets.⁶ Applicant failed to meet his burden.

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).⁷ I gave due consideration to all the favorable and extenuating factors in this case, including the length of time Applicant has held a security clearance, his honesty throughout the security clearance process, and the financial support he provides his family. However, the favorable record evidence does not outweigh the security concerns raised by Applicant's financial situation. He has yet to take control of his finances and resolve his past-due debts. Overall, the record evidence leaves me with doubts about Applicant's present eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a – 1.f, 1.h – 1.k, and 1.m:	Against Applicant
Subparagraphs 1.g and 1.l:	For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

⁶ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008). The resolution of non-SOR debts does not mitigate the security concerns at issue, because the debts were not satisfied in a manner that denotes good-faith adherence to financial obligations. Instead, the past-due tax debts were satisfied through the interception of tax refunds and the deficiency balance on the repossessed car was paid through garnishment.

⁷ 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.