



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



In the matter of: REDACTED Applicant for Security Clearance)))))	ISCR Case No. 14-04237
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Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by a history of not meeting financial obligations. He has filed multiple petitions for bankruptcy in the past 20 years. His most recent bankruptcy filing lists over \$65,000 in delinquent debt, with past-due taxes accounting for nearly half of the listed liabilities. Notwithstanding the presence of some mitigation, it is too soon to conclude that Applicant’s finances are under control and financial problems will not recur. Clearance is denied.

Procedural History

On September 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant’s conduct and circumstances raised security concerns under the financial considerations guideline.¹ On November 24, 2014, Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record (Answer).

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.

On March 26, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains six documentary exhibits that are admitted into evidence, without objection, as Government Exhibits (Gx.) 1 – 6. Applicant did not submit a response to the FORM within the allotted 30-day period.

On June 17, 2015, I was assigned Applicant's case. On my own motion, I opened the record to secure a copy of the SOR and provide Applicant a final opportunity to submit a response to the FORM. The Government provided a copy of the SOR, which was marked as Hearing Exhibit (Hx.) I. On June 25, 2015, Applicant submitted a Response that was marked and admitted into evidence, without objection, as Applicant's Exhibit (Ax.) A. The record closed on June 25, 2015.

Findings of Fact

Applicant, a sheet metal worker, has been working for his current employer since 2011. He is a high school graduate and attended college for a year before enlisting in the U.S. military. He was honorably discharged from the military after three years of service. He is single and has one child from a previous relationship. He has joint custody of the child, pays the mother court-ordered child support, and states that he is current on his child support obligation.

Applicant has had financial problems for over two decades. He filed and had his debts discharged through Chapter 7 bankruptcy in 1995, following a divorce from his former spouse. He filed for Chapter 13 bankruptcy in 2011, after separating from his child's mother and being unable to pay the financial obligations that they had jointly incurred. The Chapter 13 was discharged in 2006.

Applicant filed for Chapter 13 bankruptcy again in October 2013. His bankruptcy petition lists over \$65,000 in liabilities, with past-due federal and state taxes accounting for nearly half of the listed liabilities. Schedule E of the bankruptcy petition reflects that Applicant's past-due tax debts are for unpaid federal and state taxes for 2007 – 2012. Applicant states that his most recent financial trouble was due to a reduction in hours at work that was occasioned by sequestration and furloughs. He notes that he is repaying his past-due taxes and other debts through the Chapter 13 plan, and is current on his recurring monthly living expenses. He did not submit documentary evidence of making timely payments to the Chapter 13 trustee. As of the close of the record, Applicant had unresolved federal and state tax liens totaling over \$20,000, which were entered against him in 2006, 2010, and 2013.

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.

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, "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.²

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.

² Security clearance adjudications are "not an exact science, but rather predicative judgments about a person's security suitability," where an applicant's past history is the best indicator of future conduct. ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) [citing to *Egan*, 484 U.S. at 528-529 (1988)].

Analysis

Guideline F, Financial Considerations

The security concern regarding individuals who fail to pay their financial obligations and incur delinquent debt 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. . . .

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."³ 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.

Applicant's track record of consistent spending beyond his means and history of not paying his financial obligations is evidenced by multiple bankruptcies over the past 20 years. His most recent Chapter 13 filing lists over \$65,000 in liabilities, nearly half of which is for past-due taxes. Applicant began incurring past-due tax debts almost immediately after his last Chapter 13 was discharged in 2006. The record evidence raises the financial considerations security concern and establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

The guideline also lists a number of conditions that could mitigate the concern. 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

³ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

None of the mitigating conditions fully apply. Applicant's claim that his current financial trouble was a consequence of the recent Government shutdown is refuted by the record evidence that reflects unpaid taxes and tax liens predating the shutdown. Although Applicant took a responsible first step by filing for Chapter 13 and likely received financial counseling through the bankruptcy process, such favorable evidence is insufficient to mitigate the security concerns raised by his adverse financial history.

Furthermore, individuals seeking a security clearance are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of substantial delinquent debt.⁴ Additionally, applicants for a security clearance must establish that they manage their finances in a manner expected of those granted access to this nation's secrets. Applicant failed to meet his burden of persuasion. He did not submit evidence indicative of financial reform and, based on his past history, failed to mitigate concerns that he will continue to manage his finances in a manner inconsistent with what is expected of those granted access to classified information.

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 an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁵ I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's military service and work as a federal contractor. However, the favorable record evidence does not outweigh the security concerns raised by Applicant's long track record of not paying his financial obligations, which dates back to at least 1995. Even if I were to assume that Applicant has been timely paying his bankruptcy trustee per an approved Chapter 13 plan, his failure to pay his taxes after his debts were discharged through bankruptcy in 2006

⁴ ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008).

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.

reflects a lack of financial reform. An insufficient amount of time has passed to mitigate the serious security concerns raised by Applicant's adverse financial history, which includes evidence of repeatedly failing to meet the obligation of all citizens to timely pay their tax obligation. Overall, the record evidence leaves me with doubts and questions 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: **Against Applicant**
Subparagraph 1.g: **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 access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge