



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-04839
)
 Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

12/11/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his past-due debts. He deliberately ignored his financial obligations to finance a lifestyle he could not otherwise afford. He attempted to mislead the Government about his finances during the background investigation. His past-due debts, the circumstances under which they arose, and his dishonesty raise concerns about his eligibility for continued access to classified information. Clearance is denied.

Statement of the Case

On March 4, 2015, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging that his conduct and circumstances raised security concerns under the financial considerations and personal conduct guidelines.¹

On May 11, 2015, Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).² On June 25, 2015,

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.

Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was initially scheduled for October 29, 2015, but was rescheduled at Applicant's request, for December 3, 2015.³

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 – 7. Applicant testified, called several character witnesses, and offered Applicant's Exhibits (Ax.) A – M.⁴ I granted his request to keep the record open for the submission of additional evidence. He timely submitted Ax. N – EE.⁵ All exhibits were admitted into the record without objection. The hearing transcript (Tr.) was received on December 11, 2015, and the record closed on January 8, 2016.

Findings of Fact

Applicant, who is in his early thirties, has a bachelor's degree in computer science and a master's degree in business administration (MBA). He is the chief executive officer of his own company, which performs work on federal contracts. He has owned the company since approximately 2002. He employs about 19 individuals. His company's gross annual revenues have ranged from a high of 1.9 million to a recent low of about \$600,000. Applicant testified that the highest amount of annual compensation he has received from his company is approximately \$125,000. He currently earns about \$6,000 a month.⁶ Applicant's references, who have known him both professionally and socially, have a high opinion of his character.⁷

Applicant was first granted eligibility for access to classified information about 13 years ago. As part of a periodic background reinvestigation, Applicant submitted a security clearance application (SCA) in September 2013. In response to questions regarding his finances, Applicant listed a \$3,500 past-due mortgage account for an investment property. He did not list any other negative financial information in response

² Applicant submitted 12 exhibits with his Answer. At hearing, these exhibits were identified, marked, and admitted into the record without objection as Applicant's Exhibits (Ax.) 1 – 12. Prior to the hearing, I allowed counsel to review the file copy of the Answer, to include the 12 referenced exhibits. Applicant's counsel confirmed that I had a full and complete copy of his client's original Answer. See Transcript (Tr.) at 8-9. At hearing, Applicant offered a revised Answer, Exhibit M, which was admitted into the record without objection. Notwithstanding, Applicant stated the original Answer in the case file may not have been complete. Department Counsel noted that the original Answer matched with what was in his files. It is possible that Applicant may have confused his Answer with his response to financial interrogatories, which was admitted as Gx. 7. In any case, I left the record open for over a month to provide him the opportunity to submit any additional matters, including a complete copy of his Answer. Tr. at 69-72.

³ See Hearing Exhibit (Hx.) I (scheduling correspondence, hearing notices, and case management order).

⁴ Department Counsel and Applicant's exhibit lists were marked Hx. II and III, respectively.

⁵ Applicant's post-hearing exhibits were remarked to remain sequential with those admitted at hearing (i.e., post-hearing exhibits I – M were remarked Ax. AA – EE). Department Counsel's position regarding the post-hearing exhibits and the list of post-hearing exhibits were marked Hx. IV and Hx. V, respectively.

⁶ Tr. at 13-16, 41-42; Ex. B.

⁷ Tr. at 78-91; Ex. G.

to questions asking whether he had any judgments, liens, foreclosures, or collection accounts in the past seven years.⁸

In December 2013, Applicant's security clearance background interview was conducted. He was asked about several large bank deposits and withdrawals. For instance, Applicant's March 2011 bank records indicate he withdrew over \$10,000 and then a few weeks later made a \$50,000 deposit. Applicant explained the \$10,000 withdrawal was for "spending money for a trip that he took to Las Vegas," while the \$50,000 deposit was to purchase a high-end luxury vehicle.⁹ Applicant testified that for the past five years he has traveled to Las Vegas every year on vacation.¹⁰ His SCA reveals extensive vacation travel to Europe, Central America, and the Caribbean from 2004 to 2013.¹¹ During this same time frame, Applicant submitted a request to modify the mortgage for one of his investment properties due to financial hardship, claiming a monthly income of just \$400.¹²

During the 2013 background interview, Applicant also was asked by the investigator whether he had any negative financial accounts responsive to the questions initially asked on the security clearance application, i.e., judgments, liens, foreclosures, or collection accounts. He denied having any such negative accounts. He also stated that he had "not defaulted on any type of loans" and was "not currently over 120 days delinquent on any debt."¹³ The background investigator then confronted Applicant with numerous negative accounts appearing on his credit report, including judgments, foreclosures, collections, and delinquencies of over 120 days.

Applicant was specifically questioned by the investigator about the 15 delinquent debts totaling over \$180,000, which are referenced at SOR 1.b – 1.p. He claimed to be either unaware of the debts or was in the process of resolving them.¹⁴ At hearing, Applicant testified he was unaware of these debts until he received the SOR in 2015.¹⁵

⁸ Gx. 1 at 48.

⁹ Gx. 2 at 4-5; Tr. at 57-59 (an Aston Martin).

¹⁰ Tr. at 67.

¹¹ Gx. 1 at 22-40.

¹² Ax. Z.

¹³ Gx. 2 at 5.

¹⁴ Gx. 2 at 5-9.

¹⁵ Tr. at 69 ("And you had no knowledge of some of these obligations until the Statement of Reasons?" Applicant responds: That's correct."). *But see*, Gx. 2, 2013 background interview; Gx. 7, 2014 financial interrogatory (Applicant was asked about the SOR debts).

The SOR debts and their current status are discussed below.

Tax lien (SOR 1.a): In February 2013, or about eight months before the submission of the SCA, Applicant received a written notice from the IRS that he and his company owed a significant amount of past-due taxes. As of February 2014, Applicant and his company owed past-due federal taxes for 2008 – 2010, totaling over \$106,000. Applicant claims he is paying the debt. He provided an unsigned installment agreement and proof of one payment. The IRS filed a tax lien for over \$34,600 against him in September 2014. Post-hearing, Applicant submitted a release of tax lien as proof he had resolved the tax debt. However, the release is for an earlier federal tax lien. The 2014 federal tax lien remains unresolved. (Tr. at 19-20, 42-47, 72, 77; Gx. 4 at 2; Gx. 5; Ax. C at 1; Ax. E; Ax. K, Ax. M, Tab E; Ax. N, Ax. DD.)¹⁶

Judgments (SOR 1.b and 1.c): In November 2009 and February 2013, judgments totaling over \$5,000 were entered against Applicant for past-due homeowner association (HOA) fees. After a garnishment action to enforce the judgments was filed, Applicant contacted the creditor. The creditor withdrew the garnishment action in return for Applicant's agreement to pay the debt. Applicant submitted a copy of the payment plan and states that his final payment was due in September 2015. He provided no documentation showing the debt was paid or otherwise favorably resolved. (Tr. at 20-22; Gx. 6; Ax. 5; Ax. 6; Ax. M; Ax. I)¹⁷

Mortgage-related debts (SOR 1.d, 1.e, and 1.f): Between 2006 and 2007, Applicant purchased two investment properties. He partially financed the purchases through mortgage loans. He last made a payment on the mortgages in 2011, or two years before submitting his SCA.

A November 2013 credit report reflects that both properties were in foreclosure.¹⁸ At hearing, Applicant claimed no knowledge as to whether either property had been foreclosed upon by the lender. He testified that he resolved the mortgage debts either through a deed in lieu or by paying an agreed-upon settlement amount. Post-hearing, he submitted a letter regarding the settlement and satisfaction regarding one of his mortgage-related debts (pay-off letter). However, the account number on the pay-off

¹⁶ Applicant's past-due \$106,000 federal tax debt and apparent falsification of his SCA by failing to disclose the tax debt were not alleged. See Gx. 1 at 46 ("In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?", Applicant responded: "No.") As with all such non-alleged matters, this evidence is only being considered in assessing Applicant's mitigation case, credibility, and whole-person factors.

¹⁷ Applicant did successfully dispute the reporting of the judgment referenced in SOR 1.b with one of the credit reporting agencies. It is unclear from the record the basis of the dispute. Under the circumstances, such evidence alone is insufficient to mitigate the security concerns raised by the judgments. See ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) ("evidence that an unresolved debt has dropped from an applicant's credit report does not preclude a Judge from considering its significance.").

¹⁸ Applicant now claims he was the victim of predatory lending practices and fraud. He provided news articles regarding the unlawful lending practices engaged in by some lenders. See Ax. T – V. He did not supply any evidence tying any of his mortgage-related debts to actual evidence of fraud. See ISCR Case No. 10-02803 (App. Bd. Mar. 19, 2012) (applicant bears burden of submitting evidence of actual fraud).

letter does not match any of the three mortgage-related SOR debts.¹⁹ Furthermore, in comparing Applicant's personal financial statement (PFS) from June 2014 to his more recent PFS, it appears he satisfied a second mortgage on his primary residence with the same lender who submitted the pay-off letter.²⁰

Applicant did not provide any additional documentation to corroborate his claims that he resolved the mortgage-related SOR debts, such as a deed in lieu or a 1099-C. Under the circumstances, Applicant failed to demonstrate that he responsibly addressed the mortgage-related SOR debts. (Tr. at 23-24, 48-57, 73-77)

Charged-off credit accounts (SOR 1.g and 1.h): Applicant's credit reports reflect a charged-off line of credit and credit card totaling over \$37,000. The accounts were opened in 2007 and 2002, respectively. The last payment on either account was in 2011.²¹ Applicant claims both accounts were the result of fraud. He disputed the debts through one of the major credit reporting agencies, which after conducting its own investigation verified his liability for the debts.²² Post-hearing, Applicant filed a police report claiming that both debts were the result of identity theft from 2007. Both debts remain unresolved. (Tr. at 24-28, 57-59; Ax. X)

Miscellaneous collection accounts (SOR 1.i – 1.p): Applicant's 2013 credit report reflects eight collection accounts for wireless cellphone service, utilities, insurance, etc. Combined, these eight accounts total approximately \$2,500. Applicant claims these debts were either paid, brought current, or the result of fraud. He addressed SOR debts 1.i, and 1.k – 1.p. However, the \$1,500 collection account referenced in 1.j remains unresolved. He claims the debt, which originally is for a utility account, was the responsibility of a former tenant. He did not supply sufficient evidence to substantiate his claim, nor that the debt has been addressed.

Applicant received financial counseling. His current PFS indicates that he is able to pay his recurring monthly obligations and has approximately \$157 left over each month to pay debts or address unanticipated expenses.

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.

¹⁹ Compare, Ex. D, with, Gx. 3 at 4; Gx. 4, Trade Lines 12, 13, and 17; Ax. C at 2-3 (credit agency verifies that all three mortgage-related debts referenced in SOR 1.d – 1.f belong to Applicant).

²⁰ Compare, Gx. 7 (June 2014 personal financial statement shows payments to same lender for first and second mortgage on primary residence), with, Ex. B (current PFS only shows payment on first mortgage).

²¹ Gx. 4, Trade Lines 15 and 18.

²² Ax. C at 3-4.

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.

Administrative Judges are responsible for ensuring that due process proceedings are conducted "in a fair, timely, and orderly manner." Directive ¶ E3.1.10. Judges make certain 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 financial considerations security concern 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 accumulated a significant amount of past-due debt because he routinely and repeatedly decided to disregard his lawful financial obligations, in order to finance a lifestyle he could not otherwise afford. Accordingly, the record evidence squarely raises the serious security concerns under the financial considerations guideline. The record evidence also 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 financial considerations guideline lists conditions that can mitigate the security concern. I have considered all the mitigating conditions in assessing Applicant's case, including the following:

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 which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant receives some credit under AG ¶¶ 20(d) and 20(e) for addressing the minor SOR debts referenced at 1.i and 1.k – 1.p. However, none of the other mitigating conditions apply. Notwithstanding the receipt of financial counseling, Applicant's delinquent debts are numerous, substantial, and ongoing. He accumulated over

\$106,000 in past-due federal taxes and an additional \$180,000 in consumer-related delinquent debt. He stopped paying his mortgages and other credit accounts in 2011, while at the same time purchasing luxury items and taking numerous vacations to foreign locales. He routinely ignored his financial obligations until his overdue creditors took legal action to force him to pay the debt.

Additionally, Applicant's background investigation disclosed large sums of money transfers that could not be adequately explained, especially in light of his claimed financial hardship during some of the same time frame. Notwithstanding Applicant's relatively recent efforts to address his financial situation, security concerns regarding his finances and the circumstances under which they arose remain.²³

Guideline E, Personal Conduct

The personal conduct security concern is explained at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Individuals applying for a security clearance must provide truthful responses to questions asked of them during the background investigation, including in responding to questions on the security clearance application. However, the omission of material information standing alone is not enough to establish that an individual intentionally falsified their application. Instead, an administrative judge must examine the facts and circumstances surrounding the omission to determine an individual's true intent.²⁴

After a complete and thorough review of the evidence, and having an opportunity to observe Applicant's demeanor, I find that he deliberately attempted to mislead the Government regarding the extent of his financial problems. Applicant stated on the SCA that he only had one past-due mortgage account and the approximate amount of the delinquency was \$3,500. Instead, a contemporaneous credit check revealed that his mortgage-related and other delinquent debts exceeded \$180,000. His past-due debts include judgments, foreclosures, and numerous charged-off and collection accounts. Applicant stopped paying the mortgages on his investment properties, a credit card, and a line of credit two years before submitting his SCA. Even if he were attempting to resolve the debts, his failure to disclose the information in response to straightforward questions was clearly deliberate, especially in light of his education and background.

²³ ISCR Case No. 13-00311 at 3 (App. Bd. Jan. 24, 2014) ("In a Guideline F case, a Judge must evaluate an applicant's financial condition for what it may reveal about the applicant's self-control, judgment, and other pertinent qualities."). See *also*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

²⁴ See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

Applicant tried to deceive the Government by minimizing the extent of his financial problems. Beyond the sheer number of past-due debts, Applicant's explanation for failing to disclose them on the SCA were inconsistent with other record evidence and implausible. Applicant's deliberate falsification of his SCA establishes the personal conduct security concern and disqualification condition AG ¶ 16(a).²⁵ None of the mitigating conditions apply, as Applicant continued to provide false and misleading information during his background interview and at hearing. Applicant's personal conduct continues to raise a security concern.

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).²⁶ I hereby incorporate my comments under Guidelines E and F, and highlight some additional whole-person factors.

I gave due consideration to Applicant's work as a federal contractor and favorable character references. However, he has a lengthy history of placing his personal interests above his financial obligations, to include the legal obligation of all citizens to pay their taxes. He then attempted to deceive the Government during the current background investigation regarding the extent of his financial problems. After considering and weighing all the evidence, both favorable and unfavorable, I find that Applicant's financial situation and personal conduct continue to raise serious security concerns. Overall, the record evidence leaves me with significant doubts about his eligibility for continued access to classified information.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations):	Against APPLICANT
Subparagraphs 1.a – 1.h, and 1.j:	Against Applicant
Subparagraphs 1.i and 1.k – 1.p:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	Against APPLICANT
Subparagraph 2.a:	Against Applicant

²⁵ Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

²⁶ The non-exhaustive list of adjudicative 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.

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