



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-06243
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/22/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant’s accumulation of a substantial amount of delinquent debt raised 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. Security concerns raised by his financial situation remain. Clearance is denied.

Procedural History

On January 23, 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 3, 2015, Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information.

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 23, 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 April 20, 2015. I convened the hearing as scheduled. At hearing, Department Counsel offered Government Exhibits (Gx.) 1 – 5. Applicant testified and offered Applicant's Exhibits (Ax.) A – B. All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on April 27, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant, 36, is separated from his wife. He has one minor child for whom he provides financial support. He served in the military for four years and has worked as a federal contractor for the past 20 years. He has been steadily employed since 2002. He has worked for his current employer since July 2008. His current annual income is over \$90,000. He has held a security clearance since at least 1989.²

Over the past six years, Applicant has amassed a long record of not paying his debts, resulting in the accumulation of a substantial amount of delinquent debt, the majority of which is mortgage related. In about 2003, Applicant purchased Home A for about \$200,000. He secured a residential mortgage loan to finance his purchase of the home. In 2009, shortly before getting married and purchasing another home, Applicant stopped paying the mortgage on Home A. In his 2013 security clearance application, Applicant stated that he attempted to short sell the property without success and the home was being foreclosed. In his Answer, Applicant states that the property was vandalized and deemed unsellable. As of the hearing, he had not contacted the creditor in at least six months and was unaware of the current status of Home A or his delinquent mortgage. A 2013 credit report submitted by the Government reflects that the past-due balance on the mortgage for Home A was approximately \$49,000. Applicant did not submit any documentation substantiating his claims regarding Home A or the current status of the mortgage. The delinquent mortgage debt for Home A is referenced at SOR 1.b, and remains unresolved.³

In about 2010, Applicant purchased Home B with his wife. He financed the \$400,000 purchase price through a Veteran's Administration backed mortgage loan. He stopped paying the mortgage on Home B in approximately August 2013, shortly after he and his wife separated. An August 2014 credit report, Gx. 4, reflects that Applicant was over \$38,500 past-due on his mortgage for Home B. The delinquent mortgage for Home B was resolved through foreclosure sale in September 2014. The past-due amount before the foreclosure sale is referenced at SOR 1.a.⁴

² Tr. at 31-34, 53, 58-60; Gx. 1; Gx. 2.

³ Tr. at 34-38, 52-55; Answer; Gx. 1 at 27; Gx. 3 at 7.

⁴ Tr. at 34-38, 52-55; Answer; Gx. 4 at 1; Ax. B.

Applicant admits the remaining nine debts listed on the SOR, which range from a \$35 collection account to a \$7,000 charged-off account for a car that was repossessed in 2013. Together, these nine debts total nearly \$10,000. In July 2013, Applicant was confronted with a majority of the same delinquent debts during his security clearance background interview and, at the time, promised to resolve his debts. Applicant states that he now has the financial means to address his delinquent debts. As of the hearing, he had taken no action to resolve any of the SOR debts. He did note that he had purchased another car and was current on his monthly payments on his new car.⁵

Applicant has received financial counseling from a close family friend. He testified that he received the following advice from his financial advisor:

She has shown me where in her professional opinion which of these debts I need to pay off sooner rather than later, how to go about paying off these, . . . She sat down with me and explained that, you know, I need to call them [his overdue creditors], I need to work with them, even start making payments.⁶

Despite having nearly \$1,000 a month in disposable income after paying his recurring monthly expenses,⁷ Applicant did not follow through with the financial advisors' advice. As of the hearing, ten delinquent debts totaling over \$50,000 remain unresolved.

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

⁵ Tr. at 30, 45-52; Answer; Gx. 2.

⁶ Tr. at 56.

⁷ Gx. 2, *Personal Financial Statement*.

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.⁸

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 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

⁸ Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). In making such determinations, judges examine an individual’s past history and current circumstances. ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014); ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013).

in satisfaction of his or her debts.”⁹ 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 has a long track record of not paying his debts, resulting in the accumulation of over \$50,000 in delinquent debt. Despite having the financial means to satisfy some of his debts and promising over the course of the security clearance process that he would address his past-due debts, he has taken no voluntary action to resolve any of his delinquent accounts. Instead of paying his past-due obligations, Applicant purchased another vehicle. 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; and

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 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 apply. Applicant claims his financial problems were caused by the separation from his wife. However, the evidence reflects that his financial situation is principally due to his decision to walk away from his financial obligation to pay the mortgage on Home A and assume responsibility for the mortgage

⁹ 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).

for a far more expensive home. Despite having the apparent means to, at a minimum, resolve his non-mortgage related debt, Applicant has taken no documented action to voluntarily resolve any of his past-due debts. The only SOR debt that was resolved as of the hearing was the delinquent mortgage on Home B. Yet, this debt was only resolved through foreclosure, which does not rise to the level of good-faith resolution of past-due debts or faithful adherence to financial obligations contemplated by the mitigating conditions. Applicant has received financial counseling, but such counseling also does not mitigate the security concerns at issue because he has failed to follow through with the sound financial advice that he has received. His delinquent debts are numerous, substantial, and remain unresolved. Applicant's financial situation continues to cast doubt on his current eligibility.

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).¹⁰ I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's honorable military service and that he has held a security clearance for years without apparent issue. However, the favorable record evidence does not outweigh the security concerns raised by Applicant's financial situation.

An individual is not required to be debt free, or required to resolve all past-due debts simultaneously, or even resolve the delinquent debts listed in the SOR first. However, individuals seeking a security clearance must establish that they manage their finances in a manner expected of those granted access to this nation's secrets. Notwithstanding the presence of some favorable evidence, Applicant failed to meet his burden of persuasion.¹¹ Consequently, 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.k: **Against Applicant**

¹⁰ 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.

¹¹ ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (Favorable evidence regarding individual's character "may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").

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