



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-04492
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial situation. He has made some effort to address his delinquent debts. However, his long track record of financial irresponsibility and the misleading statements he has made during the course of the security clearance process regarding his finances raise concerns about his eligibility for access to classified information. Clearance is denied.

Statement of the Case

On February 24, 2014, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). Applicant answered the SOR and requested a hearing (Answer).

On April 10, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed with a hearing. On April 15, 2014, a notice of hearing (NOH) was issued setting the hearing for May 16, 2014. The hearing was held as scheduled. Government Exhibits (Gx.) 1 – 4 and Applicant’s Exhibits (Ax.) A – D were admitted into evidence without objection. Applicant testified and I granted his request for

additional time to submit documents post hearing. He elected not to submit post-hearing matters. The hearing transcript (Tr.) was received on May 28, 2014, and the record closed on June 6, 2014.

Findings of Fact

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

Applicant is in his late forties. He has never married and has two adult children. He helps support both children, one of whom has a serious medical issue. Applicant has been working for a defense contractor since 2011. He was previously granted a security clearance in about 1997. (Tr. at 12, 32-37; Gx. 1; Gx. 4)

In October 2011, Applicant submitted a security clearance application (SCA). He listed a delinquent \$2,500 hospital bill. Applicant claimed that he contacted the creditor and was working on a payment plan to resolve the debt. The debt remains unpaid. It is listed at SOR ¶ 1.n. At hearing, Applicant first stated that he had not contacted the creditor or made payments. After being reminded of the claims he had previously made in his SCA, Applicant testified that he made some partial payments and would provide proof post hearing. He did not submit any documents post hearing. (Tr. at 57-59; Gx. 1)

After Applicant submitted his SCA, a credit report was obtained as part of his security clearance background investigation. The credit report revealed that Applicant had far more delinquent accounts than what he listed on his SCA. The credit report lists about 14 debts in collection status. (Gx. 2)

In January 2012, Applicant sat down for a security clearance background interview. He was confronted with the negative financial information listed in his credit report. Applicant stated he was paying some of the debts and promised to resolve all his delinquent accounts by December 2012. (Gx. 4)

In October 2013, Applicant was sent a financial interrogatory. He was asked to update and provide documentation regarding the status of his delinquent accounts. He submitted proof of resolving a few debts, but most of his debts remained unpaid. Seven of the debts inquired about in the interrogatory are still unresolved and are listed in the the SOR at ¶¶ 1.e, 1.f, and 1.h – 1.l. (Gx. 4; Ax. A)

The SOR lists 14 debts in collection status, totaling about \$9,500. Applicant submitted proof of resolving 6 of the 14 debts. (SOR ¶¶ 1.a – 1.d, 1.g, and 1.m.) The other eight SOR debts, which include the \$2,500 delinquent hospital bill in ¶ 1.n, remain unresolved. Applicant admits the debts listed at ¶¶ 1.e, 1.f, 1.i, 1.k, and 1.l. He disputes the debts in ¶ 1.h and 1.j. During the current security clearance process, Applicant claimed that he has paid, negotiated a payment plan, or disputed the eight debts. He was given time post hearing to corroborate his claims. No documents were submitted post hearing. (Tr. at 38-59, 64-66, 77-80; Answer; Gx. 4; Ax. B – D)

Applicant states that his financial trouble is related to periods of unemployment and underemployment. He used to work in the construction industry, and the collapse of the housing market left him unemployed from 2008 to 2009. He also suffered from periods of underemployment due to the unsteady nature of his previous work. He has been gainfully employed since about 2009. He has gone online and received help in repairing his credit report, but has not received financial or debt counseling. He currently has less than \$50 in savings. (Tr. at 32-35, 60-64, Gx. 1)

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 only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

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 common sense 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 531.¹ However, as the Appeal Board, recently reaffirmed, there is no *per se* rule requiring disqualification and a judge must decide each case based on its own merits.²

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.

¹ 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.”).

² ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

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.³

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 an applicant with financial problems 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.

The debts alleged in the SOR are established through Applicant’s admissions and the other evidence submitted at hearing, to include his SCA and credit reports. Applicant’s history of failing to pay his debts raises the Guideline F concern and establishes the disqualifying conditions at:

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

AG ¶ 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 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

³ See, ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments about an individual’s ability and willness to protect and safeguard classified information). See also, ISCR Case No. 11-12202 at 5 (The “Adjudicative Guidelines are designed to *predict*. The prediction in nonsecurity violation cases is made by identifying and then evaluating behaviors or circumstances that have an articulable nexus to the ability or willingness to safeguard classified information.”) (emphasis in original).

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 date back several years and continue to the present date. His financial situation is, in part, due to matters beyond his control; namely, job loss, underemployment, and helping to support his ill son. However, he has been gainfully employed since 2009 and has yet to address debts that he claimed to have resolved in his SCA, clearance interview, and interrogatory response. His failure to address these debts undermines the favorable evidence Applicant presented of paying several other debts.⁴

Applicant's resolution of several SOR debts mitigates the security concern raised by those debts. Notwithstanding the resolution of those debts, it is too soon to conclude that Applicant will continue to manage his personal finances in a responsible fashion once the spotlight of the current security clearance review has passed. During the course of the security clearance process, Applicant claimed that he paid, was paying, or was in the process of resolving several SOR debts. Afterwards, the evidence established that he had not addressed the debts. His failure to address these debts and his misleading statements about resolving the debts raise doubts as to the extent to which his finances are under control.⁵ None of the mitigating conditions apply. Consequently, although Applicant has made some headway in addressing some of his past-due debts, it is too soon to resolve the financial considerations concern in his favor.

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

⁴ ISCR Case No. 11-13984 (App. Bd. Feb. 20, 2014) (denial upheld because track record of financial irresponsibility undermined mitigating value of recent efforts to resolve delinquent debts).

⁵ ISCR Case No. 10-08560 at 3 (App. Bd. Dec. 5, 2011) (conduct that is not alleged can be used to examine an applicant's evidence in mitigation and credibility).

nine factors listed at AG ¶ 2(a).⁶ I took into account that Applicant previously held a clearance (apparently) without issue and helps to financially support his children. However, this and other favorable record evidence does not mitigate the security concerns raised by his financial situation and the misleading statements he has made about his finances. Overall, the record evidence leaves me with doubts about Applicant's continued 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.d:	For Applicant
Subparagraphs 1.e – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h – 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against 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

⁶ 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.