



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-08632
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

09/30/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant accumulated a significant amount of delinquent debt, which raised security concerns about his eligibility for continued access to classified information. He has yet to take action to address his past-due debts and his overall financial situation continues to raise a security concern. Clearance is denied.

Procedural History

On January 10, 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 10, 2015, Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information. (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 April 8, 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 May 28, 2015.² The hearing was convened as scheduled.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 – 5. Applicant testified and offered Applicant's Exhibit (Ax.) A. All exhibits were admitted into evidence without objection. At Applicant's request, the record was kept open for three weeks to provide him the opportunity to submit additional documents in support of his case. He did not submit any documents post-hearing. The hearing transcript (Tr.) was received on June 5, 2015, and the record closed on June 19, 2015.

Findings of Fact

Applicant, recently divorced, has three children who he financially supports. He has earned two associate's degrees and is a few credit hours shy of earning a bachelor's degree in business management. He served in the U.S. military for 22 years. His service included a deployment in support of the first Gulf War. In 2011, Applicant was forced to retire from the military due to reaching higher year tenure. He retired in the E-6 paygrade, and received an honorable discharge. After retiring, Applicant was unemployed for several months before securing a job with his current employer in February 2012. (Tr. at 24-25, 28-31, 48; Gx. 1)

While unemployed, Applicant's marriage started to fall apart. He and his now former wife separated in the spring of 2013, and their divorce was finalized in early 2015. Applicant testified that his financial problems are directly related to his divorce, which he described as "long" and "ugly." (Tr. at 25)

Applicant explained that his former wife received rental income for one of the properties he had purchased while in the military, but she did not use the money to pay the mortgage. His former wife's actions, as well as the inability to rent the property for some time, left Applicant unable to pay the mortgage and the property was eventually foreclosed. SOR debt 1.a for over \$117,000, relates to the deficiency balance owed after the property was foreclosed and sold at auction. Applicant accepted responsibility for this debt in his divorce. He discussed this debt with a security clearance background investigator in 2013, and a year later was asked about the status of the debt in an interrogatory sent to him by DOD adjudicators. The last time Applicant spoke to the creditor regarding the debt was in 2013. (Tr. at 27, 33-38, 49; Gx. 2; Ax. A at 4)

Applicant owned a second home that he purchased while in the military, and was unable to pay the mortgage. He resolved the delinquent mortgage on this second home through a short sale. (Tr. at 26, 50)

The SOR lists 11 non-mortgage related delinquent debts, which together total over \$25,000. The debts include a collection account for \$75 listed at ¶ SOR 1.I, and two charged off credit card accounts totaling over \$14,000 that are listed at SOR ¶¶ 1.b

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

and 1.c. Applicant accepted responsibility for these two credit card debts in his divorce. (Ax. A) He discussed the \$75 debt in SOR 1.I with a security clearance background investigator in 2013. (Gx. 2)

Applicant was asked about the SOR debts in the financial interrogatory that was sent to him by DOD adjudicators in 2014. The interrogatory specifically asked him to provide documentation to verify the status of the debts, to include any payments made toward satisfaction of the debts. In his interrogatory response, Applicant claimed that he had resolved some of the debts and disputed others. He submitted no documentation to corroborate his claims. (Gx. 2)

In his Answer, Applicant admitted all the SOR debts, except a \$1,550 debt alleged in SOR ¶ 1.f and a \$205 medical debt alleged in SOR ¶ 1.h. All the SOR debts are listed on at least one of the credit reports admitted at hearing. (Gx. 3 – 5)

At hearing, Applicant again claimed that he had resolved or was in the process of resolving some of the SOR debts, to include the two minor debts listed at SOR ¶¶ 1.j and 1.l, which together total about \$150. He noted he had forgotten to bring supporting documentation and the record was kept open for three weeks to provide him the opportunity to submit such documentation. Applicant did not submit any documentation post-hearing to substantiate his hearing testimony. (Tr. at 27, 38-44, 49, 52-56)

Applicant has not received financial counseling. He earns approximately \$78,000 annually from his job as a federal contractor. He testified that, after paying his monthly expenses, he has about \$1,100 monthly in discretionary income that he plans to use to resolve his past-due debts. (Tr. at 44-51)

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 531.³

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."⁴ The concern also encompasses financial

³ 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.").

⁴ 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).

irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant's accumulation of a significant amount of delinquent debt that remains unaddressed 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 financial situation is, in part, due to his divorce. He responsibly addressed the delinquent mortgage on his second home through a short sale. However, AG ¶ 20(b) does not fully apply nor does it fully mitigate the concerns at issue because, despite being aware of the Government's concerns regarding his past-due debts, Applicant has yet to take action to responsibly address the overwhelming amount of delinquent debt that he has accumulated over the last several years.

Applicant's delinquent debts are numerous, substantial, and ongoing. He did not submit documentation to corroborate his claims that he satisfied or is in the process of resolving the SOR debts, to include the two minor debts identified at SOR ¶¶ 1.j and 1l. He also did not submit any documentation to substantiate the basis of his dispute regarding any of the SOR debts. He has yet to take any concrete action, to include receiving financial counseling, to take control of and improve his financial situation. Accordingly, none of the other 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.⁵ 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).⁶ I hereby incorporate my comments under Guideline F. I gave due consideration to all the favorable and extenuating factors in this case, to include Applicant's military service, the length of time he has held a security clearance, and the financial support he provides his children. However, the favorable record evidence does not outweigh the security concerns raised by his financial situation. He has yet to take control of his finances and address 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.l:	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 continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

⁵ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁶ 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.