



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



In the matter of:)
)
 REDACTED) ISCR Case No. 12-08851
)
 Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns raised by his past history of financial problems. His financial problems were, in part, caused by his wife’s unemployment and caring for his ill mother-in-law. Over the past three years, he has either paid or is in the process of paying the delinquent debts listed in the Statement of Reasons (SOR), which total less than \$9,000. He has served for over 40 years as a federal contractor, and has always handled and safeguarded classified information in a proper manner. Applicant’s long history of safeguarding sensitive information and service to the nation, coupled with his resolution of a majority of the debts at issue, mitigates the security concerns raised by his past financial situation. Clearance is granted.

Procedural History

On July 30, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant an SOR, alleging security concerns under Guideline F (Financial Considerations). Applicant answered the SOR and requested a hearing (Answer).

On September 18, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. Applicant's hearing was originally scheduled for October 24, 2012, but he requested a delay due to a medical emergency. His request for a delay was granted and the hearing was rescheduled for January 15, 2013.¹

At hearing, Government Exhibits (Gx.) 1 through 4 and Applicant's Exhibits (Ax.) A through C were admitted into evidence without objection. Applicant testified and requested additional time to submit further documents. I granted his request and he timely submitted Ax. D.² This exhibit was also admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on January 25, 2013, and the record closed on January 31, 2013.

Findings of Fact

Applicant is 60 years old, married, with two adult children. He has been working for his current employer since 1972, and has held a security clearance since 1980. He is part of the leadership council of his church. (Tr. at 29-30; GE 1; AE C)

In 2002, Applicant had his debts discharged through bankruptcy. (Answer) No evidence was presented regarding the amount or type of debts that were discharged. Applicant's finances remained stable for the next six years.

In 2007, Applicant purchased a home for his 80-year-old mother-in-law. His daughter, who was going to live with her grandmother, was supposed to pay a portion of the mortgage on this second home. Applicant's daughter was laid off and was unable to pay her portion of the mortgage. The second home was foreclosed. Applicant testified that he does not owe anything for the second home after the auction sale and provided documentation showing that the property was sold, in 2010, for more than was owed on the mortgage. (Tr. at 34-36, 46-48; GE 2, Subject Interview (SI); Ax. D, Atch 8)

Applicant was unaware of the financial problems involving the second home until the day he saw his daughter and mother-in-law moving out, which was shortly before the house was foreclosed. At the time, his wife was in charge of the finances and kept him in the dark about their daughter's failure to pay her portion of the mortgage. Applicant submitted documentation from the lender showing that they addressed issues regarding the foreclosure solely to his wife. (Tr. at 34-36, 46-48; GE 2 at 91)

In 2008, Applicant had liens placed against his properties for unpaid federal taxes. Applicant explained that his former accountant misfiled his tax returns, which led to the tax liens. Applicant satisfied the tax debt through wage garnishment and the liens were released. He fell behind on his bills as a result of the decrease in household

¹ Although Applicant did not receive the official Notice of Hearing until January 4, 2013, he received actual notice of the rescheduled hearing date more than 15 days before the hearing. (Tr. at 7-9)

² For clarity, I have renumbered the Attachments (Atch) to Ax. D, Atch 1 through 8.

income occasioned by the garnishment, his wife's unemployment, and caring for his ill mother-in-law. (Tr. at 31-34; GE 1; GE 2 at 93-98)³

In 2011, Applicant submitted a security clearance application (SCA) for his periodic reinvestigation. He disclosed the foreclosure and tax debt, as well as a judgment for \$3,651 and a delinquent phone bill for approximately \$300. (GE 1) The judgment is referenced in SOR ¶ 1.a, and Applicant submitted proof that he has been paying at least \$100 a month per agreement with the creditor since August 2010. (Ax. D, Atch 1) The phone bill is referenced in SOR ¶¶ 1. j and 1.i. Applicant denies he owed the bill, but paid it to resolve the debt. (Tr. at 45-46; GE 2, SI at 2; Ax. D, Atch 5)

Applicant's remaining nine SOR debts total less than \$6,000. He paid or is paying the five medical debts listed at SOR ¶¶ 1.b – 1.f, totaling approximately \$1,250. (Tr. at 40-42; Ax. D, Atch 2-3; Answer) He paid the debts in SOR ¶¶ 1.g and 1.i, which together total about \$1,480. (Ax. D, Atch 3-4) He contests the debt in SOR ¶ 1.k, and submitted a dispute with one of the credit reporting agencies. (Ax. D, Atch 6) The last SOR debt that remains unresolved is a charged-off credit card account for less than \$750. Applicant has contacted the creditor and is attempting to resolve this last SOR debt. (Tr. at 45; Ax. D; Answer)

Applicant recognizes that he is partly to blame for his past financial problems, because he did not keep an eye on his finances and relied entirely on his wife to manage their finances. He now keeps a close eye on their finances. He has not accumulated any other delinquent debt and meets his current financial obligations. (Tr. at 36, 48-53)

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

³ Although Applicant's tax debt was not alleged in the SOR, I considered it in determining whether he mitigated the financial considerations concern. See ISCR Case No. 11-05365 at 2-3 (App. Bd. May 1, 2012) (unalleged tax debt may be considered in assessing an applicant's mitigation case).

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.

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 relating to financial problems is articulated 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’s history of financial irresponsibility, which has resulted in bankruptcy, foreclosure, and a number of delinquent accounts raise this concern. It also establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

An individual's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."⁴ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under 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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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 history of financial irresponsibility raises a significant concern. However, over the past three years, he has either paid or is in the process of satisfying the delinquent debts he accumulated as a consequence of his wife's unemployment and paying for his ailing mother-in-law's medical bills. Arguably, Applicant should have addressed his delinquent debts more promptly. Yet, he has prudently addressed his debts in a methodical fashion over the past three years with the limited means he has had at his disposal and only two debts remain unresolved as of the close of the record.⁵ As for the two remaining unresolved SOR debts, Applicant has challenged one through the formal dispute process and contacted the creditor to resolve the other debt. He is aware that resolution of these debts is paramount to retaining his security clearance. More importantly, based on his three-year track record of debt resolution, he will resolve

⁴ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

⁵ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan").

these last two debts. Furthermore, he no longer relies on his wife to manage their financial affairs and now stays on top of their finances. As a result, he has not amassed any other delinquent debt. He dispelled the concerns raised by his history of financial trouble. AG ¶¶ 20(a) – 20(d) apply.

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).⁶ Applicant has worked for a defense contractor for over 40 years and held a clearance without issue since 1980. He voluntarily disclosed his financial problems on the SCA and then set out to resolve his debts. He demonstrated the honesty and personal responsibility the Government expects from those granted access to classified information. These favorable whole-person factors, coupled with the mitigating conditions noted above, leaves me convinced that he can continue to be entrusted with classified information. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.n: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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.