



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



In the matter of:)
)
 REDACTED) ISCR Case No. 13-01130
)
 Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant is a federal contractor seeking to re-establish his eligibility for access to classified information, which was initially denied or revoked for financial issues in 2004. Subsequently, he defaulted on his mortgage loans, his home was foreclosed, and he incurred a substantial mortgage-related debt. He took no action to address this substantial debt until recently. Instead, he used his disposable income for frivolous purchases and leisure travel. Applicant failed to establish true financial reform and to mitigate the security concerns raised by his financial situation. Clearance is denied.

Statement of the Case

On April 29, 2013, Applicant's request for access to classified information was denied by the Defense Office of Hearings and Appeal. After the required one-year waiting period, Applicant submitted a request for reconsideration. Applicant claimed in his reconsideration request that he was resolving his delinquent debts and was now managing his finances in a responsible fashion. Based on these assertions and documents submitted regarding the repayment of other debt, Applicant's request for reconsideration was accepted by the Department of Defense (DOD).

On April 4, 2014, in accordance with Executive Order (E.O.) 10865 and DOD Directive 5220.6 (Directive), DOD issued Applicant a Statement of Reasons (SOR), which alleges the security concerns under Guideline F (Financial Considerations). Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record (Answer).

On June 30, 2014, Department Counsel forwarded to Applicant the matters it would be submitting to the administrative judge. The Government's proposed findings of fact, argument, and nine documentary exhibits are contained in Department Counsel's file of relevant material (FORM). Applicant submitted a response to the FORM and reaffirmed his decision to have a decision regarding his clearance eligibility based solely on the written record (Response).¹

On September 4, 2014, I was assigned Applicant's case and provided him the opportunity to submit additional matters in support of his case, to include updated information regarding his efforts to resolve the delinquent debt for over \$70,000 alleged in the SOR.² The record remained open for this purpose until September 12, 2014. Applicant elected not to submit any additional matters for consideration.

Findings of Fact

After a thorough review of the pleadings and exhibits, and making only those reasonable inferences therefrom, I make the following findings of fact:

Applicant, who is in his fifties, is married and has six children. He served in the U.S. military from 1983 to 1996 before being honorably discharged. From 2006 to 2008 he pursued and earned an associate's degree, a bachelor's degree, and a master's degree. From 1996 to the present, he has been employed as a federal contractor. He has been with his current employer since about July 2013.

Applicant's financial trouble dates back to 2004, when his access to classified information was initially denied or revoked because of adverse financial issues. Applicant states that his financial trouble at the time was caused by a recent divorce and his own financial irresponsibility.³ Around the same time, Applicant purchased a home that he later acknowledged he could not afford.⁴

¹ Government Exhibits (Gx.) 1 – 8, without objection, were admitted into evidence. I have considered Applicant's comments regarding the inaccuracies reflected in Gx. 9 in determining the weight, if any, to afford the exhibit. See Response at 3. Applicant's objections to the Government's proposed findings of fact are overruled. *Id.* at 1. The facts that are relevant to a determination of Applicant's security eligibility and the security-significant inferences to be drawn therefrom, if any, are set forth in the Decision.

² See Hearing Exhibit (Hx.) I, which has been included and made a part of the record.

³ Gx. 5 at 38-40; Gx. 7 at 2. The parties presented limited information regarding this initial adverse clearance determination.

⁴ Answer at 1.

In early 2009, Applicant was working for his former employer and living in State A. The Government contract(s) Applicant was working on changed to require a security clearance. Unable to secure a clearance and wanting to live closer to his extended family living in State B, Applicant secured a federal contracting job in State B that did not require a security clearance.

In the summer of 2009, Applicant left his former job and moved to State B. He was unable to afford the expenses associated with the maintenance and upkeep of his former home in State A. Applicant states that he was unable to sell his former home to repay the amount owed on his first and second mortgages because the local housing market had collapsed, significantly depressing his home's resale value.

Applicant's former home was eventually foreclosed upon, which resolved the first mortgage on the property. Applicant, in his reapplication request and notarized Answer, states that the foreclosure did not relieve him of the debt related to the second mortgage.⁵ He admits owing over \$70,000 on this debt.⁶

In April 2014, as part of his reapplication request, Applicant submitted a security clearance application (SCA). In response to multiple questions requiring him to disclose any potential adverse financial information, to include questions inquiring about any potential foreclosures or defaults in the past seven years and whether he was currently delinquent on any debt over 90-days, Applicant answered "no."⁷ After receiving the FORM, wherein Department Counsel specifically noted this apparent falsification,⁸ Applicant for the *first time* claimed that he "really thought that when the property was sold both loans would be dissolved and did not know any differently."⁹

Applicant has been living with his in-laws since moving to State B. In his reapplication request, Applicant states and provides information of resolving other debts, to include rehabilitating his student loan debt. He states that he now pays for purchases using cash instead of relying on credit. He notes that this newfound financial insight has allowed him to pay cash to acquire a boat and purchase vehicles for his children. His SCA reveals that he took a vacation trip to Mexico in 2012.¹⁰

⁵ Answer at 4-5 ("The property was only being appraised at \$217,000 . . . The primary loan [with lender X] of approximately \$271,000 was resolved due to the property being sold. This left the secondary loan / debt with [lender Y] for approximately \$66,000 not being paid off and is the incident cited [in SOR 1.a]."); Gx. 7 at 1 ("The primary loan was resolved due to the property being sold. The secondary loan debt has not been paid off . . .")

⁶ Answer. See also Gx. 8 at 3 (credit report lists balance owed on debt at over \$71,000); Ax. 4, *Proposed Structured Settlement Agreement* ("total unpaid principal balance" is over \$100,000).

⁷ Gx. 5 at 40-42.

⁸ FORM at 4.

⁹ Response at 3. Applicant's apparent falsification of his SCA was not alleged in the SOR and is only being considered in assessing his credibility, case in mitigation, and whole-person factors. ISCR Case No. 14-00019 at 7 (App. Bd. Sep. 18, 2014)

¹⁰ Gx. 5 at 7, 34; Gx. 7.

Applicant claims to take full responsibility for failing to address the mortgage-related debt and making poor financial decisions following the foreclosure of his former home in 2009.¹¹ Notwithstanding these claims, Applicant also states in his reapplication request that he is fully aware that the negative financial entry regarding the mortgage-related debt “will be removed from my credit report by 2016.”¹²

Applicant contacted the creditor for the second mortgage debt a few days before submitting his Answer. He orally agreed to a repayment plan to resolve the debt, but when he received the written settlement agreement, he disagreed with the total amount the creditor claims is due. Applicant promised in his Answer, which he submitted in April 2014, to continue working with the creditor to resolve the debt.¹³ He did not submit any documentary evidence to substantiate his dispute, or of his subsequent efforts to work with the creditor, or of making a payment towards a final resolution of the debt. He did submit documentation showing that he had recently paid a \$550 debt for a past-due homeowner’s association (HOA) fee for his former home in State A.

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. 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 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

¹¹ Answer at 5; Gx. 7 at 1 (similar statement)

¹² Gx. 7 at 1.

¹³ Gx. 4 at 2.

denials.” *Egan*, 484 U.S. at 531.¹⁴ However, a judge must decide each case based on its own merits because there is no *per se* rule requiring disqualification.¹⁵

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.¹⁶

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 § 7.¹⁷ 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 potential 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.

Applicant’s ten-year history of financial problems and recent evidence of frivolous spending while, at the same time, accumulating and disregarding a substantial amount

¹⁴ 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.”).

¹⁵ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

¹⁶ 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 willingness to protect and safeguard classified information).

¹⁷ See *also*, ISCR Case No. 11-13626 at 4 (App. Bd. July 25, 2014) (“an adverse decision under the Directive is not a determination that the applicant is disloyal. Rather, such a decision signifies that the applicant has engaged in conduct or has otherwise experienced circumstances that raise questions about his or her judgment and reliability.”).

of delinquent debt raise the Guideline F concern. The record evidence also establishes the following disqualifying conditions:

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

AG ¶ 19(b): indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; 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 mitigating conditions that are potentially relevant in this case are:

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 decision to walk away from a mortgage on a home whose value had plummeted as a consequence of the recent economic downturn is generally referred to now a days as a "strategic default."¹⁸ Although the confluence of external factors and conditions that contributed to the recent recession and eventually led many to pursue similar unilateral action were circumstances beyond Applicant's control, his financial situation is not wholly due to such external factors. For instance, Applicant's decision to leave his former contracting job and take on the added expense of maintaining two

¹⁸ ISCR Case No. 11-08271 (App. Bd. May 30, 2013) (defining term).

households was, in part, driven by a desire to live closer to his extended family.¹⁹ More importantly, Applicant failed to establish that he attempted in good faith to resolve his mortgage-related debt before and after the foreclosure action. AG ¶ 20(b) does not apply.

Over the past five years, Applicant has been gainfully employed as a federal contractor. During that time, Applicant disregarded the second mortgage debt. Instead of addressing this substantial debt, Applicant spent his disposable income on leisure travel and purchasing non-essential consumer goods, to include a boat for himself and cars for his children. His short-lived attempt to resolve the second mortgage debt *after* the SOR was issued undermines the favorable evidence of repaying other debts. Applicant's belated action to address the second mortgage debt and statement that the debt will no longer appear on his credit report in two years, leads me to conclude that the recent action he took to resolve the \$70,000 debt and satisfy the \$550 HOA debt were solely motivated by a desire to secure a security clearance.²⁰ Applicant's statement and conduct evidence a lack of true financial reform and indicates that he may walk away from other financial obligations in the future, especially once the spotlight of the current security clearance review has passed.²¹ AG ¶¶ 20(a) and 20(d) do not apply.

Applicant did not present evidence of receiving financial or debt counseling. He also did not present documentary evidence to substantiate his dispute regarding the actual amount owed for the mortgage-related debt.²² AG ¶¶ 20(c) and 20(e) do not apply. Furthermore, Applicant's failure to reveal the foreclosure and the delinquent \$70,000 debt on his SCA, as well as his inconsistent and contradictory statements regarding his understanding as to his liability for this debt, raise troubling concerns about his credibility, reliability, and trustworthiness.

For all the foregoing reasons, I find that none of the mitigating conditions under the financial considerations guideline apply. Applicant's financial situation continues to raise questions and doubts about his current judgment, reliability, and trustworthiness.

¹⁹ ISCR Case No. 09-08108 at 3-4 (App. Bd. Feb. 15, 2011) (Favorable clearance decision reversed, in part, because applicant's decision to move and take a lower paying job to benefit his family, though laudable, was not a circumstance outside of his control).

²⁰ ISCR Case No. 12-02315 (App. Bd. Aug. 8, 2014) (Sustaining denial where applicant's action to remedy his financial situation was brought on by the security clearance process, not true fiscal reform).

²¹ *Contrast with* ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (Individual, who had elected to strategically default four years earlier, was granted a clearance because he took good-faith steps to avoid foreclosure and provided clear evidence of financial reform).

²² Applicant failed to present any evidence that the mortgage debt at issue is uncollectible under state law. However, the legal enforceability of the debt is to a large extent irrelevant as to the security concerns raised by Applicant's ten-year history of financial problems and fiscally irresponsible behavior. See, e.g., ISCR Case No. 12-02859 (App. Bd. May 16, 2014) (Sustaining denial where applicant had means to pay and elected not to address a mortgage-related debt that was potentially unenforceable under state law).

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).²³ I gave due consideration to Applicant's military service and years of service as a federal contractor. However, even after his clearance eligibility was denied or revoked for financial issues, Applicant continued to manage his personal finances in an irresponsible and reckless fashion. He failed to mitigate the security concerns raised by his financial situation, including that he may handle his security obligations and responsibilities in a comparable irresponsible and risky manner. Overall, the record evidence leaves me with doubts about Applicant's 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.b: **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

²³ 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.