



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-00371
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his troubled finances. His delinquent debts total over \$200,000, with the majority of of his delinquent debts consisting of unpaid federal and state taxes. Although his current financial situation is partly due to the failure of his business, he did not submit documentation to prove that he has responsibly addressed his delinquent debts. He has not worked out a payment plan or made other arrangements to resolve his debts. He has yet to take control of his finances and it appears highly likely that his poor financial state, and the attendant security concerns raised by his poor finances, will continue for some time. Clearance is denied.

Statement of the Case

On March 4, 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, waived his right to a hearing, and requested a decision on the written record (Answer).

On May 19, 2014, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government's proposed findings of fact, argument, and seven documentary exhibits. Applicant submitted a response to the FORM (Response). With his Response, Applicant submitted four documentary exhibits. Government Exhibits (Gx.) 1 – 7 and Applicant's Exhibits (Ax.) A – D, without objection, were admitted into evidence. On July 30, 2014, I was assigned Applicant's case.

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 is in his mid-sixties. He has been married for over 25 years and has three adult children. He is a carpenter by trade and, in 2000, started his own construction company. Between 2006 and 2008, Applicant's construction company started having financial trouble and went out of business. Since his business closed, Applicant has been working different construction jobs including several positions as a federal contractor. He has suffered from periods of unemployment and underemployment since his company went out of business. He was hired by his current sponsor for a security clearance in June 2013.

Applicant stopped paying his federal and state taxes after his business began having financial trouble. He admits to owing the IRS for unpaid federal taxes for tax years 2006 through 2012. His unpaid federal tax debt totals over \$160,000. (SOR 1.i – 1.r) In 2012, a judgment for over \$24,000 was filed against him for unpaid state taxes for tax years 2006 through 2012. (SOR 1.a) Applicant's 2013 federal tax return was intercepted to offset his federal tax debt.¹ He did not submit evidence of a repayment plan. He also did not submit documentation of efforts to resolve his tax debts or reasonable basis upon which to dispute the tax debts. Applicant states that after his business failed he found himself financially unable to pay his tax obligations.²

Applicant refinanced his home in an attempt to save his business and, subsequently, fell behind on his mortgage. (SOR 1.b) He submitted proof that his loan was recently modified, with a resulting reduction in his monthly mortgage payments.³ He did not submit evidence of making any payments per the terms of the modified mortgage agreement.

In addition to Applicant's delinquent mortgage and substantial tax debts, the SOR alleges nine collection accounts. Applicant admits these debts in collection status, except for a \$177 debt referenced in SOR 1.j. Applicant claims he resolved this minor debt, but did not submit documentation to corroborate his claim. He admits that the

¹ Ax. B.

² Answer.

³ Ax. A.

remaining eight collection accounts, which total over \$30,000 and includes an unpaid \$62 debt, remain unresolved. (SOR 1.c – 1.i, 1.k)

Applicant did not submit evidence of receiving financial or debt counseling. He states that his income is “50 to 60 percent less” than what he made when he owned his construction business. He further states that his “meager income” only allows him to pay his current living expenses and he is unable to “set-up a payment plan with anyone” to resolve his delinquent debts. He describes his current financial situation as living “paycheck to paycheck.”⁴

Applicant disclosed his delinquent tax debts on his security clearance application (SCA).⁵ He submitted a letter from an officer in the U.S. military, who he has been acquainted with for the past 13 years. The witness writes that he is unaware of any issues regarding Applicant’s character that would pose a security threat.⁶

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

⁴ Answer.

⁵ Gx. 3.

⁶ Ax. D.

denials.” *Egan*, 484 U.S. at 531.⁷ However, a judge must decide each case based on its own merits because there is no *per se* rule requiring disqualification.⁸

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.⁹

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 § 7.¹⁰ 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.

⁷ 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.”).

⁸ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

⁹ 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). See also, ISCR Case No. 11-12202 at 5 (A judge’s predictive determination “is made by identifying and then evaluating behaviors or circumstances that have an articulable nexus to the ability or willingness to safeguard classified information.”).

¹⁰ 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. Such questions, if not mitigated by the applicant, can impugn his or her fitness for access to national secrets.”).

The delinquent debts alleged in the SOR are established through Applicant's admissions and the other evidence submitted with the FORM, notably the SCA, credit reports, and public record documents. See Gx. 2 – 6. Applicant's delinquent debts and, of particular significance, his unpaid tax debts raise the Guideline F concern and establish 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.

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 debts are numerous, substantial, and on-going. AG ¶ 20(a) does not apply. Although Applicant's financial situation can be traced back to the failure of his construction business, which was likely impacted by the general downturn in the economy at that time, his failure to pay his tax obligations were not a matter beyond his control. Moreover, notwithstanding the recent modification of his delinquent mortgage, Applicant has failed to act responsibly in addressing his longstanding debts in the six to eight years that have passed since his business closed. AG ¶ 20(b) does not apply.

Applicant did not present evidence of receiving financial or debt counseling. He also did not present documentation of a meaningful track record of debt repayment or even a plan to resolve his delinquent debts. Applicant's failure to provide substantial and credible evidence of financial reform leaves all the other mitigating conditions unavailable. Applicant has yet to take control of his finances and it appears highly likely that his delinquent debts, and the attendant security concerns raised by these debts, will continue into the foreseeable future.¹¹

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).¹²

I gave due consideration to Applicant's honesty in revealing his delinquent debts on his SCA, his favorable character reference, and that his current financial predicament is partly due to the recent economic recession that led to his business's failure and subsequent unemployment and underemployment. Also, it appears that Applicant is starting to resolve his financial situation, as evidenced by his recent success in negotiating a modification of his mortgage. However, this and other favorable record evidence does not mitigate the security concerns raised by his debts and overall financial situation.¹³

The security concern raised by an individual with a substantial amount of delinquent debt extends beyond the concern that they might engage in illegal acts to generate funds to resolve their financial situation. The concern also requires a close examination of the circumstances that led the individual to accumulate delinquent debt to determine whether such circumstances indicate that the individual would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.¹⁴

¹¹ Security clearance adjudications are "not an exact science, but rather predicative judgments about a person's security suitability," where an applicant's past history is the best indicator of future conduct. ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) [citing to *Egan*, 484 U.S. at 528-529 (1988)].

¹² 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.

¹³ ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (Favorable record evidence regarding an individual's character, honesty, and reliability "may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").

¹⁴ ISCR Case No. 12-04554 at 3 (App. Bd. July 25, 2014); ISCR Case No. 13-00311 at 3 (App. Bd. Jan. 24, 2014); ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

As the true focus of the financial considerations security concern is an individual's judgment, reliability, and trustworthiness, an applicant is *not* required to be debt free or to pay off all their delinquent debts to mitigate the concern.¹⁵ Conversely, the resolution of all delinquent debt does not by itself necessarily mitigate the initial concern raised by the individual's accumulation of delinquent debt.¹⁶ Instead, an individual must establish that their judgment, reliability, and trustworthiness meets the high standards required for those granted access to this nation's secrets. Generally, an individual can meet this heavy burden by presenting credible and substantial evidence of true financial reform, such as through a demonstrated track record of meaningful debt repayment.¹⁷

In the present case, Applicant failed to meet his heavy burden of mitigating the security concerns raised by the substantial amount of delinquent debt that remains unaddressed and unresolved. Beyond the recent modification of his mortgage, Applicant presented no documentation that he has started to repay or otherwise resolve his delinquent debts.¹⁸ Applicant's repeated and consistent failure to pay his federal and state taxes raises heightened concern about his suitability, because an individual with a history of failing to meet the obligation of all citizens to pay their taxes may similarly fail to discharge their security obligations. 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.r: **Against Applicant**

¹⁵ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009).

¹⁶ See, e.g., ISCR Case No. 11-13984 (App. Bd. Feb. 20, 2014) (notwithstanding payment of all SOR debts, denial of clearance upheld because long history of not paying debts and failure to establish true financial reform).

¹⁷ See, e.g., ISCR Case No. 14-00504 (App. Bd. Aug. 4, 2014) (denial of clearance reversed where individual submitted evidence of debt repayment of more than half of the SOR debts); ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (grant affirmed upon proof of clear evidence of financial reform).

¹⁸ Even if I were to assume that Applicant resolved the \$177 SOR debt and has started to pay his mortgage, he failed to meet his heavy burden of mitigating the security concerns raised by his long history of failing to pay his financial obligations. Of particular note in this respect is Applicant's failure to address and remedy the minor debts alleged in the SOR, such as the \$62 collection account referenced in 1.k. Applicant's failure to address such minor debts severely undermines favorable evidence of fiscal reform.

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