



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-00508
)	
Applicant for Security Clearance)	

Appearances

For Government: Phillip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns raised by her financial situation. Her delinquent debts total approximately \$30,000, with a substantial amount of her debt related to unpaid federal and state taxes. She has repeatedly failed to timely file her federal and state tax returns, and has accumulated a sizeable amount of delinquent tax debt. She took no action to resolve her longstanding tax situation until after the hearing. She has not received financial or debt counseling and her inability to take control over her finances leaves her highly vulnerable to future financial problems with their attendant security concerns. Clearance is denied.

Statement of the Case

On April 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 to establish her eligibility for access to classified information (Answer).

On August 7, 2014, Department Counsel notified the Hearing Office that the Government was prepared to proceed with a hearing in this case. On August 20, 2014,

a notice of hearing (NOH) was issued setting the hearing for September 16, 2014. The hearing was held as scheduled. Department Counsel offered exhibits (Gx.) 1 – 4. Applicant testified, offered exhibits (Ax.) A – E,¹ and requested additional time post hearing to submit further documents in support of her case. Applicant's request was granted and she timely submitted exhibits (Ax.) F – N. All exhibits were admitted into evidence without objection.² The hearing transcript (Tr.) was received on September 30, 2014, and the record closed on October 3, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:³

Applicant is in her early fifties. She is single, never married, and has two adult children. Her children live with her and recently started contributing to the household expenses. She attributes her financial problems to external pressures involving her family. She testified that her financial issues are a result of financially assisting her close and extended family members. She does not have a budget, nor does she otherwise regularly track her income and expenses. Notwithstanding these financial issues, Applicant's recent performance report reflects that she exceeds expectations. She submitted character references from a number of individuals who opine that she is a trustworthy individual who is dedicated to her family, community, and employer.⁴

Applicant admits that she failed to timely file her federal and state income tax returns for tax years 2008, 2011, and 2012. At hearing, she explained that she filled out the tax forms, but simply forgot to mail them. Her federal and state tax debts total over \$19,000. After the hearing, Applicant submitted applications to the IRS and state requesting to establish payment plans to resolve her delinquent tax debts. As of the close of the record, Applicant did not have an approved repayment plan and her delinquent federal and state tax debts remain unresolved. The state has filed several tax liens against Applicant, with the earliest lien dating back to 1999.⁵

In addition to the federal and state tax delinquencies,⁶ Applicant's SOR also lists several other delinquent debts totaling approximately \$11,500. The major portion of this delinquent debt load is for a car loan that Applicant co-signed. The car was repossessed about a year ago. At hearing, Applicant testified that she settled the debt

¹ Ax. A – C were originally attached to the Answer.

² Department Counsel's list of exhibits and Applicant's post-hearing exhibit list are included in the record as Hearing Exhibits (Hx.) I and II, respectively. See *also* Tr. at 3 (exhibits admitted at hearing).

³ In reaching the above findings of fact, I have made only those reasonable inferences supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

⁴ Tr. at 33, 48, 68-74; Ax. M – N.

⁵ Tr. at 32-33, 59-64, 66-67; Ax. D; Ax. I – L; Answer.

⁶ Applicant's federal and state tax problems are set forth at SOR ¶¶ 1.a – 1.j.

and agreed to a repayment plan with the creditor. She requested additional time post hearing to submit proof of making payments per the terms of the repayment plan.⁷ She did not submit documentation to substantiate her claim that she was repaying this debt. She did submit proof of satisfying three of the SOR debts, which together total less than \$500.⁸ The remaining SOR debts remain unresolved.

Applicant has been employed as a federal contractor for a combined total of 19 years. She has held a clearance since 2001, and has been working for her current employer since August 2012. She submitted documentation of receiving and successfully completing required security training and briefings.⁹

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 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, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.¹⁰ However, as no two cases are alike and there is no *per se* rule requiring disqualification, each case must be decided on its own merits.¹¹

⁷ Tr. at 35-48; Ax. A (settlement offer from creditor).

⁸ Specifically, the debts identified at SOR ¶¶ 1.i, l.m, and 1.p. Ax. B – C, E.

⁹ Tr. at 19; Gx. 1.

¹⁰ 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.”).

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

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.¹²

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.

Guideline F, Financial Considerations

Applicant’s admissions, coupled with the record evidence, raise the financial considerations security concern, which 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 record evidence also establishes the disqualifying conditions listed at:

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

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

The guideline also sets forth 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

¹² Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). An administrative judge is required to examine an individual’s past history and current circumstances to make a predictive judgment about an individual’s ability and willingness to protect and safeguard classified information. ISCR Case No. 11-12202; ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

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 paid three minor debts listed in the SOR and, thereby, mitigated any security concern emanating from these minor debts. However, after carefully considering and weighing all the evidence, I find that Applicant failed to establish the full applicability of any of the available mitigating conditions.

Applicant's delinquent debts total approximately \$30,000, with a substantial amount of her debt related to unpaid federal and state taxes.¹³ Although her financial problems are in part due to her laudable decision to financially assist her family members, such voluntary action does not qualify for application of AG ¶ 20(b).¹⁴ Furthermore, Applicant has not acted promptly and responsibly in addressing her past-due debts. She has not received financial or debt counseling and her inability to take control over her finances leaves her highly vulnerable to future financial problems.

Additionally, Applicant's failure to timely file her tax returns and pay her taxes raise *significant* concerns about her fitness to hold a security clearance. An individual with a history of failing to meet the obligation of all citizens to timely file and pay their taxes may similarly fail to discharge their security obligations. Applicant's recent efforts to resolve her sizeable tax debt does not mitigate this concern, especially in light of her past history and failure to take action to resolve her tax debt until *after* the hearing.¹⁵

¹³ Applicant failed to submit documentation to substantiate her claim that she is repaying the debt listed at SOR 1.k. ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue). However, even if I were to credit Applicant's testimony without corroborating documentation, her recent action to resolve this debt does not mitigate her long history of failing to meet her financial obligations.

¹⁴ ISCR Case 09-08108 at 4 (App. Bd. Feb. 15, 2011).

¹⁵ ISCR Case No. 14-00151 at 3 (App. Bd. Sep. 12, 2014) ("In evaluating a case under Guideline F, a Judge may consider not only the extent of an applicant's debts but also the circumstances under which

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).¹⁶ I considered Applicant's work as a federal contractor, her honesty during the course of the security clearance process about her financial problems, and that she has held a security clearance for over 20 years. I also took into account her favorable character references. However, this and other favorable record evidence does not mitigate the security concerns raised by her financial situation and the circumstances giving rise to them.¹⁷ 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.k,:	Against Applicant
Subparagraphs 1.l, 1.m, and 1.p:	For Applicant
Subparagraphs 1.n – 1.o:	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

they were incurred and the applicant's response to them."); ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999) ("Promises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions.").

¹⁶ 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.

¹⁷ ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) ("Even years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").