



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-00669
)
 Applicant for Security Clearance)

Appearances

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

08/04/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial situation. His delinquent debts, which include judgments and seriously past-due tax debts, total over \$25,000. He has received financial counseling and resolved a significant amount of other debt accumulated after receiving a Chapter 7 bankruptcy discharge. However, he is not currently repaying or working to resolve the seriously past-due debts that remain. His financial situation is far from under control and it appears highly likely that his poor financial situation, and the attendant security concerns raised by his poor finances, will continue for some time. Clearance is denied.

Statement of the Case

On April 3, 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). On May 1, 2014, Applicant answered the SOR and requested a hearing to his establish his eligibility for access to classified information (Answer).

On June 24, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed with a hearing in this case. On June 30, 2014, a notice of hearing (NOH) was issued setting the hearing for July 16, 2014. The hearing was held as scheduled. Department Counsel offered exhibits (Gx.) 1 – 4, which were admitted into evidence without objection. Applicant testified, called his sister as a character witness, and offered exhibits (Ax.) A – C, which were admitted without objection. He elected not to submit post-hearing matters. The hearing transcript (Tr.) was received on July 25, 2014, and the record closed on July 30, 2014.

Findings of Fact

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

Applicant is in his late thirties. He served in the U.S. military from 1995 to 2003, receiving an honorable discharge. He was previously granted a security clearance while serving in the military. He has attended community college and earned his certification in computer-aided design, but has not yet received his undergraduate degree. He is divorced and has one child from his former marriage. He is active in his church.¹

Applicant claims his financial problems are related to his divorce, unemployment, and underemployment. He admits that his current situation is also due to some poor financial decisions he made in the past. He divorced in 2007 and was laid off from his previous job in the real estate sector in 2008, when the housing market collapsed. He was unemployed for several months before securing another job, but at a steep reduction in pay. He went from earning a yearly salary of approximately \$55,000 to about \$30,000. He began working for his current employer in September 2013, at a yearly salary of \$47,000. He was laid off in April 2014, after the SOR was issued. He has been receiving unemployment compensation since being laid off, but only receives a fraction of his salary. His employer continues to sponsor him for a clearance.²

Applicant received a Chapter 7 bankruptcy discharge in 2004. Over the past 10 years, he accumulated approximately \$45,000 in debt. He claims to have resolved about \$20,000 of debt over the past five years. His delinquent debts currently stand at about \$25,000. His current debts include several judgments, as well as past-due state and federal tax debts. He has not paid, settled, or reached an agreement to resolve any of the SOR debts, except for paying a \$110 debt listed in ¶ 1.k of the SOR.³

Applicant admits he has not addressed a state tax lien that was filed against him in 2005. He has unpaid federal taxes for tax year 2007. He recently filed his state tax return for the 2010 tax year, but has not yet paid the taxes owed. He attempted to

¹ Tr. at 34-35; Gx. 1.

² Tr. at 32-34, 38-41, 44-50, 62-64; Gx. 1.

³ Tr. at 37, 54-58, 64; Gx. 1, Gx. 3; Answer; Ax. A – B.

address some of his past-due tax debts through negotiated payment agreements with the taxing authorities, but stopped paying the monthly installment amount when he was laid off from his previous job in March 2013. At hearing, Applicant stated that he filed his recently due federal tax return, but has not paid the \$500 - \$600 he owes in federal taxes. He did not submit evidence of a payment plan to resolve this recent tax debt.⁴

Applicant has received free financial counseling through his church, but is unable to pay his delinquent debts because he is unemployed. He is unwilling to consider bankruptcy to resolve some of his debts, because he believes it is his duty to pay his debts. He testified that he will seek out his overdue creditors to pay his debts even if the debts (due to age) no longer appear on his credit report. His sister, who is an officer in the U.S. military, testified that she has witnessed great changes in the way Applicant manages his finances. For example, Applicant does not own a car, uses public transportation, and rents a modest basement apartment. She believes Applicant has learned from his past financial mistakes and can be trusted with classified information.⁵

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 Tr. at 55-62; Gx. 1; Answer (allegations 1.b, 1.m, and 1.n); Ax. B.

⁵ Tr. at 32, 50, 65-66, 69-78; Ax. C.

denials.” *Egan*, 484 U.S. at 531.⁶ However, as the Appeal Board, has unequivocally held there is no *per se* rule in security clearance cases requiring disqualification. A judge must decide each case based on its own merits.⁷

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.⁸

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 § 7.⁹ 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

Applicant admits all the SOR allegations, except 1.t, which is a relatively minor debt for \$146 that he disputes.¹⁰ The security concern regarding an applicant with financial problems is explained at AG ¶ 18:

⁶ 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.”).

⁷ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

⁸ 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.”).

⁹ 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.”).

¹⁰ Applicant failed to submit any documentation to substantiate his dispute of this debt. 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).

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 debts alleged in the SOR are established through Applicant's admissions and the other evidence submitted at hearing, to include his security clearance application and credit report. Applicant's financial situation raises the Guideline F concern and establishes the disqualifying conditions 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 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 financial situation is primarily due to divorce, unemployment, and long-term underemployment. He apparently resolved \$20,000 of non-SOR debts before

the SOR was issued. However, Applicant's current financial situation is also a result of his inability to adjust his spending habits when he suffered a steep decline in income and failure to file and pay his taxes. On balance, I find that AG ¶ 20(b) partially applies and AG ¶ 20(d) fully applies to the \$110 SOR debt that has now been paid.

An applicant is not required to be debt-free or required to pay off all debts immediately or simultaneously to demonstrate that they have the requisite judgment and reliability expected of those granted access to classified information. Instead, an applicant must demonstrate that, given their circumstances, they have developed a reasonable plan to resolve their financial issues and submit documentary proof of their actions to effectuate the plan.¹¹

Notwithstanding Applicant's previous efforts to address his past-due debts, he failed to meet his burden to mitigate the security concerns at issue. He currently has over \$25,000 in delinquent debts. Several of his debts are a result of a failure to pay federal and state tax obligations, and date back several years. He is not currently paying these debts, nor working to resolve them. He has received financial counseling and appears to now be living within his means.¹² However, his finances are not under control and it appears highly likely that his poor financial situation, and the attendant security concerns raised by his poor finances, will continue for some time.¹³ None of the other mitigating conditions apply. Applicant's finances remain a security concern.

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).¹⁴ I gave due consideration to Applicant's military service and that he previously held a security clearance (apparently) without issue. I also took

¹¹ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). *See also*, ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012) ("Guideline F requires a judge to consider the totality of an applicant's circumstances—the reasons underlying his financial problems and his efforts to address them—in order to arrive at a conclusion as to whether the applicant possesses the judgment and self-control required of those who have access to national security information.").

¹² *But see* 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.")

¹³ 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)].

¹⁴ 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.

into account his honesty in revealing his past-due debts on his security clearance application, his prior efforts to resolve his financial situation, and general good character. However, this and other favorable record evidence does not mitigate the security concerns raised by his financial situation.¹⁵ 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.j	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.u	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

¹⁵ ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (Favorable credibility determination and "[e]ven years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").