



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-00840
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

12/09/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns arising from his past financial problems and alleged personal conduct. He suffered a period of financial trouble after being laid off. Over the past four years, he addressed and resolved his past-due debts. His past financial problems no longer raise a concern about his current reliability, trustworthiness, and good judgment. He inadvertently failed to list his debts on his security clearance application. Clearance is granted.

Statement of the Case

On April 22, 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) and Guideline E (Personal Conduct). Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information.

On August 20, 2014, a notice of hearing (NOH) was issued setting the hearing for September 18, 2014. The hearing was held as scheduled. Government Exhibits (Gx.) 1 – 5 and Applicant’s Exhibits (Ax.) A – I were admitted into evidence without

objection. Applicant testified, called his business partner as a witness, and requested time post hearing to submit additional documents in support of his case. I granted his request and he timely submitted Ax. J – R, which were admitted without objection. The hearing transcript (Tr.) was received on October 1, 2014, and the record closed on October 15, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:¹

Applicant is in his late thirties and is married with three minor children. He is the owner-operator of a small business and is seeking a government contract in support of the DOD. The potential contract requires that all key management personnel, to include Applicant, possess and maintain a security clearance. This is Applicant's first application for a security clearance. (Tr. at 9-10, 92-95; Gx. 1)

Applicant recently went through a period of financial turmoil after being laid off by his previous employer in May 2010. His family's finances were already tight before the lay off and afterwards his decreased income was insufficient to keep pace with his family's recurring monthly expenses. Applicant fell behind on his mortgage and several other debts. The SOR lists 11 delinquent accounts, to include a substantial past due mortgage debt. (Tr. at 44, 52-57)

Applicant testified and submitted documentation of his efforts over the past four years to repay his debts. Applicant and his wife worked with their mortgage lender and their loan was modified. Applicant submitted documentation showing that the mortgage is current. He has prepaid his mortgage by three to four months, in order to provide his family some breathing room in case of future financial issues. Applicant testified that when he originally purchased his home in 2005 he was approved for a loan of approximately \$500,000. Although the prospect of a bigger home, in a better neighborhood was tempting, Applicant recognized the financial risks such a large obligation might pose in the future. Instead, he and his wife purchased their current home for approximately \$220,000. The current mortgage balance on the home is approximately \$180,000.² (Tr. at 46, 86-91; Ax. B)

Applicant also submitted documentation of satisfying five of the largest non-mortgage related SOR debts. These five SOR debts total about \$8,000.³ Starting in 2011, Applicant satisfied these debts through agreed-upon payment plans or lump sum payments. (Tr. at 45-51, 101-102, 105-107; Ax. F– H, Ax. M – N, Ax. Q)

¹ In reaching my findings of fact, I have made only those inferences reasonably supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

² Applicant's previously delinquent mortgage debt is listed at SOR ¶ 1.b.

³ These five SOR debts (and evidence of payment) are: 1.a (Ax. G), 1.c (Ax. R), 1.d (Ax. F), 1.f (Ax H), and 1.g (Ax. M - N).

Applicant states that he paid the remaining five SOR debts, which together total less than \$1,000. He submitted documentation regarding a partial \$250 payment towards satisfaction of one of these remaining minor SOR debts. He was awaiting payment confirmation regarding these debts at the close of the record. (Tr. at 50-51, 83; Ax. E, Ax. J, Ax. M, Ax. P, Ax. R)

Applicant submitted his security clearance application (SCA) in November 2013. He failed to disclose his delinquent debts in response to relevant questions regarding his financial record. He started filling out the SCA at around 2200 (10 p.m.), after a 12-hour plus workday and putting his children to sleep. He did not realize the amount of detailed background information that needed to be supplied. He had to stop on several occasions to gather the requested information, to include biographical data and other pertinent information regarding his extended family members. He voluntarily disclosed and provided detailed information regarding his past problems with alcohol. The questions regarding his financial record were at the tail end of the SCA. Applicant recalls reading the questions about his financial record around 0300 (3 a.m.). He was unsure whether he had any delinquent debts, as he had recently modified and brought current his mortgage. At the time, his mortgage account was the only debt that he knew had been delinquent. He believed that he had never been more than one to two months late in paying his mortgage. He did not want to wake his wife, who was in charge of the family's finances. In hindsight, Applicant now realizes that he should have stopped, electronically saved the SCA, and then after speaking with his wife and pulling a credit report completed the SCA. He denies intentionally falsifying his SCA. Two months after submitting his SCA, Applicant fully discussed his financial issues with a background investigator. (Tr. at 42, 64-74, 77-79, 97-108; Gx. 1 – 2; Ax. O)

Applicant started his business a few months after being laid off in May 2010. He recruited a longtime friend as a business partner. He was completely upfront with his business partner about the personal financial problems he was experiencing. His business partner has a favorable opinion regarding Applicant's reliability, credibility, and trustworthiness. (Tr. at 32-38)

Applicant testified that the first few years of the business came with some significant personal financial sacrifices. He still earns less than he did at his old job, as he pays himself far below his earning potential in order to allow the business to flourish. He has received higher year-end bonuses with each passing year as the business has started to see its profits gradually increase. His wife secured a higher paying job to offset his reduced income. He and his wife now manage their family's finances together and they have established a family budget. He files and pays his taxes on time, and has not accrued any other delinquent debt. (Tr. at 44, 52-62, 74-77, 95-97; Ax. K; Ax. O)

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. 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 denials.” *Egan*, 484 U.S. at 531.⁴ However, a judge must decide each case based on its own merits because there is no *per se* rule requiring disqualification.⁵

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 § 7.⁶ 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.

⁴ 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.”).

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

⁶ 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.”).

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 established that he satisfied the non-mortgage related SOR debts, and that he has addressed and is paying his mortgage in a timely fashion.⁷ However, the gravamen of the security concern raised by the SOR, namely, that Applicant's past financial problems raise a concern about his current fitness to hold a security clearance, is not automatically dispelled by the resolution of the SOR debts. In resolving questions raised about an individual's current suitability to hold a clearance, an administrative judge should critically and impartially examine the circumstances leading to the accumulation of delinquent debt and efforts, if any, to resolve the underlying financial situation "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."⁸ A judge's common sense evaluation of said circumstances is guided by the adjudicative guidelines (AG).

In the present case, Applicant's history of financial problems triggers application of the disqualifying conditions listed at AG ¶¶ 19(a)⁹ and 19(c).¹⁰ Applicant's circumstances also raise the following mitigating conditions under the financial considerations guideline:

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

⁷ Although Applicant did not submit documentation to corroborate his assertion that the remaining minor SOR debts were satisfied, I am satisfied that these debts have been paid based on his credible testimony and the documentation he provided to substantiate his claims of debt repayment as to the major debts listed in the SOR. ISCR Case No. 14-00504 (App. Bd. Aug. 4, 2014) (unfavorable decision reversed where individual submitted evidence of debt repayment of more than half of the SOR debts).

⁸ ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012). See *also*, ISCR Case No. 12-04554 at 3 (App. Bd. July 25, 2014); ISCR Case No. 13-00311 at 3 (App. Bd. Jan. 24, 2014).

⁹ Inability or unwillingness to satisfy debts.

¹⁰ A history of not meeting financial obligations.

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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant established AG ¶¶ 20(a) through 20(d). His past financial trouble was caused by unemployment. After regaining his financial footing, Applicant responsibly and in good faith addressed his delinquent debts. Although Applicant did not submit evidence of financial or debt counseling, he has taken a number of concrete steps evincing financial reform. Of particular note is his decision to prepay his monthly mortgage payments to provide himself sufficient financial flexibility in case of future financial trouble. Applicant is also now fully cognizant of his family's finances and, with his wife's substantial help, has worked out a budget to keep track of and control their expenses. Applicant's demonstrated track record of meaningful debt repayment and fiscal reform mitigates the security concerns raised by his recent financial trouble.¹¹

Guideline E, Personal Conduct

The personal conduct security concern is explained at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleges that Applicant deliberately falsified his SCA by failing to disclose his delinquent debts. Deliberate falsifications of a SCA raise the disqualifying condition listed at AG ¶ 16(a).¹²

¹¹ See, e.g., ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (favorable decision affirmed because applicant provided clear evidence of financial reform).

¹² Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to . . . determine security clearance eligibility.

It is axiomatic that the security clearance process depends upon the honesty of all applicants and begins with the answers provided in the SCA. However, the omission of material, adverse information standing alone is not enough to establish that an individual intentionally falsified his or her SCA. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.¹³

Applicant did not intentionally omit his delinquent debts when he was filling out his SCA during the early morning hours of November 2013. He genuinely believed that he did not have any debts to report, because he had recently modified and brought current his mortgage. At the time, this was the only debt that he knew had been delinquent. The hour of the day, his general level of exhaustion, and lack of attention to his family's finances conspired together to lead Applicant to mistakenly conclude that he did not have any debts to report. Although Applicant's arguably questionable decision to press on in completing the SCA with the limited information he had regarding his finances calls into question his judgment, he did not deliberately fail to disclose his delinquent debts. He now recognizes the extreme care that must be exercised in filling out an SCA and similar forms. Based on all the evidence, it is unlikely that he will show similar poor judgment in the future.

Additionally in finding that Applicant did not deliberately falsify his SCA, I took into account that this was his first SCA. Also, he voluntarily disclosed far more damning information regarding his past on his SCA and fully discussed his financial issues during his background interview that took place just two months after submitting his SCA. Applicant's candor and openness about other aspects of his past on his SCA and regarding his financial problems during the security clearance interview are inconsistent with the expected conduct of an individual who is deliberately trying to hide or minimize potentially adverse background information. Furthermore, I had an opportunity to observe Applicant's demeanor at hearing and found his testimony credible. Accordingly, I find that Applicant did not deliberately falsify his SCA.¹⁴

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

¹³ See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

¹⁴ In reaching this conclusion, I recognize that a judge is not required to accept an applicant's assertions, especially if such assertions are contradicted by record evidence, implausible, or internally inconsistent. In the present case, Applicant's testimony was credible, plausible, and consistent throughout.

nine factors listed at AG ¶ 2(a).¹⁵ I hereby incorporate my above comments and highlight some additional whole-person factors.

Applicant experienced financial trouble after losing his job. He decided to take control over his future and start his own business. He recruited a longtime friend as a business partner and, from the outset, disclosed to his business partner the financial problems he was facing. Notwithstanding the financial pressures of starting a new business, Applicant did not disregard his past financial obligations. He responsibly addressed his past-due debts and, over the course of the past four years, took control of his finances. His past financial problems no longer raise a concern about his current reliability, trustworthiness, and good judgment. He is now aware of the importance of responsibly managing his personal finances and the other stringent demands placed on those granted a security clearance. Overall, the record evidence leaves me with no questions or 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): FOR APPLICANT

 Subparagraph 1.a – 1.k: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

 Subparagraph 2.a: 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 access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

¹⁵ 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.