



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-01386
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns arising from his history of failing to pay his taxes and other financial obligations. He took no action to resolve his tax debts until his overdue creditors took action to force him to repay his debts. He has several judgments that remain unresolved. His financial situation raises doubts about his continued eligibility for access to classified information. Clearance is denied.

Statement of the Case

On June 27, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant’s conduct and circumstances raised security concerns under the financial considerations guideline (Guideline F).¹ On July 22, 2014, Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information.

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by DOD on September 1, 2006.

On January 22, 2015, a hearing was held. Department Counsel offered exhibits (Gx.) 1 – 11. Applicant testified and offered exhibits (Ax.) A – I. He requested additional time post hearing to submit matters, which I granted. He timely submitted Ax. K and L. All exhibits were admitted into evidence without objection. The transcript (Tr.) was received on February 2, 2015, and the record closed on February 13, 2015.

Findings of Fact

After a thorough review of the pleadings, exhibits, and transcript, I make the following findings of fact:²

Applicant, who is in his forties, is married with three children. His children range in ages from 12 to 19. He served in the U.S. military from 1992 to 2001. He has been continuously employed as a federal contractor since separating from the military. He has been with his current employer since 2013. He has held a clearance since at least 2002. (Tr. at 33, 38-39; Gx. 1)

Applicant's financial problems date to 2009. His IRS account transcripts reflect that he failed to timely file his federal tax returns and pay his taxes for tax years 2008 through 2010. (Ax. L at 44-51) Applicant claims that he filed his tax returns, but the IRS did not receive the returns. (Tr. at 34-35, 52-66, 81-83) His IRS account transcripts reflect that he was sent notices regarding his unfiled 2008 and 2009 tax returns starting in early 2010. He was sent notices regarding his unfiled 2010 tax return beginning in April 2012. (Ax. L at 43) In January 2013, the IRS sent Applicant a final collection notice and notice of intent to levy. The following month, Applicant filed his tax returns for tax years 2008 – 2010. (Ax. L at 43, 46, 50)

In February 2013, the IRS filed a tax lien against Applicant for unpaid 2008 and 2009 taxes totaling over \$135,000 (SOR ¶ 1.b). In June 2013, the IRS filed a tax lien against Applicant for unpaid 2010 taxes for over \$2,500 (SOR ¶ 1.a). In September 2013, Applicant entered into an installment agreement with the IRS to resolve his delinquent federal tax debt. He has been repaying his tax debt per the agreement and the balance is down to about \$3,000. (Ax A, Ax. B, Ax. L at 5-7, 43)

Applicant also failed to timely file his state income tax returns and pay his state income taxes for tax years 2008 – 2010. Applicant resolved his delinquent state tax debts after the state garnished his pay.³ (Tr. at 61-66; Gx. 1 at 35-38; Ax. L at 52-64)

Between 2007 and 2010, Applicant incurred other, nontax-related delinquent debt. In 2007, he secured a second mortgage on his home and invested about \$90,000

² 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.

³ Applicant's state tax debt and resolution of the debt are only being considered in assessing his credibility, mitigation case, and whole-person factors. ISCR Case No. 14-03497 at 3 (Mar. 9, 2015) (permissible to consider non-alleged conduct and circumstances on such issues as mitigation, rehabilitation, and whole-person).

of the loan proceeds in a real estate business venture. The business failed and, in 2009, he defaulted on the loan. In July 2014, he entered into a repayment plan to resolve the debt of over \$150,000 for the past-due loan (SOR ¶ 1.n). (Tr. at 45-48, 75-78; Ax. G).

Applicant paid or is paying eight delinquent medical debts, including four medical debts that were reduced to judgments between 2008 and 2009 (SOR ¶¶ f-i, k-m, o-p). (Tr. at 70-73, 78; Ax. F; Ax. I; Ax. J) He resolved other SOR debts after the hearing. He agreed to a repayment plan to resolve a 2010 judgment for over \$800 (SOR ¶ 1.c), and settled and satisfied a \$850 collection account (SOR ¶ 1.j). (Ax. L at 1-3) He recently contacted the attorney for his homeowners association (HOA) to resolve three judgments totaling over \$2,000 that were entered against him between December 2010 and October 2013 (SOR ¶¶ 1.d, e, q). Applicant testified that he attended the court hearings leading to the judgments, and confirmed he was aware of the judgments. He did not list any of these judgments on the security clearance application that he submitted on October 31, 2013.⁴ (Tr. at 36, 68-70, 79; Gx. 1; Ax. L at 74-76) The three judgments remain unresolved.

Applicant testified that his financial problems were in part caused by the substantial financial obligations he incurred in helping extended family members, including taking in his five nieces and nephews when his sister-in-law unexpectedly passed away in 2009. He asserts that he has received financial counseling, and recently started a new business selling items through the internet to supplement his six-figure income. (Tr. at 40-49, 79-81; Ax. K)

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 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.

⁴ Applicant's failure to list the HOA judgments is only being considered in assessing his credibility, mitigation case, and whole-person factors. ISCR Case No. 14-03497.

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 531.⁵

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.⁶

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 did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to 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.

The security "concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts."⁷ The concern also encompasses financial irresponsibility, which may

⁵ 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.")

⁶ See ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments).

⁷ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See *also* ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

An individual with a history of failing to meet their financial obligations, to include the obligation to file and pay taxes, can raise the financial considerations security concern. Applicant testified that he submitted his federal tax returns, but they were not received by the IRS. (Tr. at 34-35) He did not submit copies of the returns he purportedly timely filed. Instead, when notified about his unfiled tax returns, Applicant disregarded the notices until the IRS took enforcement action. His actions were inconsistent with those of an individual who timely files their returns, but for unknown reasons the returns are not delivered. His testimony that he filed his tax returns was not credible. His failure to timely file and pay his taxes resulted in sizeable fees and penalties, as well as the filing of substantial tax liens.⁸

Applicant's history of failing to pay his taxes and other financial obligations raises the financial considerations security concern. The record evidence establishes 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(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 following mitigating conditions were potentially raised by the evidence:

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; and

⁸ Applicant's failure to timely file his 2008 – 2010 tax returns was not alleged. However, a "Judge may consider not only the extent of an applicant's debts but also the circumstances under which they were incurred and the applicant's response to them." ISCR Case No. 14-00151 at 3 (App. Bd. Sep. 12, 2014) Furthermore, the SOR allegations regarding the tax liens should have placed Applicant on notice that the liens and the basis for the liens were at issue. ISCR Case No. 12-01266 (App. Bd. Apr. 4, 2014).

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

Applicant claims his financial problems were of limited duration. However, he disregarded the majority of his financial obligations until his overdue creditors took some action to force him to pay (tax liens) or his delinquent debts (\$150,000 second mortgage) placed his security clearance at issue.⁹ He has yet to resolve the three HOA judgments that were filed against him between 2010 and 2013, and only contacted the creditor to resolve these judgments after the hearing. Individuals who disregard their financial obligations until their creditors take action to force them to pay or pay their past-due debts to keep their clearance do not demonstrate the level of fiscal responsibility expected of those granted access to classified information. AG ¶¶ 20(a) and 20(d) do not apply.¹⁰

Applicant's financial problems were in part due to a failed business venture and the financial assistance he provided (and continues to provide) to his extended family members. However, his ability to make a substantial and risky real estate investment and his laudable efforts caring for his extended family members came at the expense of his other financial obligations, to include the obligation of all citizens to pay their taxes. He disregarded his past-due taxes and other debts for several years and some of his debts remain unresolved as of the close of the record. Applicant failed to demonstrate that, even after considering the circumstances beyond his control, he dealt with his financial problems in a responsible fashion. AG ¶¶ 20(c) partially applies.

Applicant asserts that he has received computer-based financial counseling. (Ax. K) He did not submit documentation to corroborate his statements. Assuming *arguendo* that he received such counseling, it is too soon to make an affirmative finding that he is in firm control of his finances. AG ¶¶ 20(b) partially applies.

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).¹¹ I hereby incorporate my analysis under Guideline F, and highlight some additional whole-person factors.

⁹ Applicant testified that he refinanced his home in 2012, and believed the new mortgage incorporated his delinquent second mortgage. (Tr. at 75-78) His testimony was implausible. Applicant has extensive experience in the real estate business and the substantial amount that was past due on the second mortgage would have made a noticeable difference regarding the terms of any new home loan. He waited until after the SOR was issued to enter into a repayment plan to resolve this substantial past-due debt.

¹⁰ Applicant mitigated concerns raised by the medical debts (SOR 1.k – 1.m, 1.o) that had not been reduced to judgment and were satisfied.

¹¹ 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

Applicant has worked for the Government, either in the military or as a contractor, since 1992. He has held a security clearance without issue for many years. His financial trouble is, in part, a result of overextending himself to help family members, not for other issues that might raise an independent security concern. However, he demonstrated over the course of several years that he is willing to place his personal obligations over his financial obligations. This raises a concern that he may similarly disregard his security obligations and responsibilities if a conflict arises with his personal obligations. He did not mitigate this security concern. Furthermore, his testimony regarding some of his past-due debts and tax situation was not credible and was contradicted by the record evidence, raising additional concerns about his suitability for a clearance. 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.j, 1.n, 1.p, 1.q:	Against Applicant
Subparagraphs 1.k – 1.m, 1.o:	For 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

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.