



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-01936
)	
Applicant for Security Clearance)	

Appearances

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

06/02/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the presence of delinquent debt. His past financial trouble was due to a failed business venture. After regaining his financial footing, Applicant contacted his creditors and has been resolving his past-due debts. His finances are now under control, and his past financial trouble no longer raises concerns about his security suitability. Clearance is granted.

Statement of the Case

On July 1, 2014, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that his conduct and circumstances raised security concerns under the financial considerations guideline.¹ Applicant timely answered the SOR and requested a hearing to establish his eligibility for continued 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 December 9, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed. On December 30, 2014, after coordinating with the parties, the Hearing Office issued a notice scheduling the hearing for January 22, 2015. The hearing was held as scheduled. Department Counsel offered Government exhibits (Gx.) 1 – 4. Applicant testified and offered Applicant exhibits (Ax.) A – J. Applicant's request to keep the record open to submit additional material was granted. He timely submitted Ax. K – P. All exhibits were admitted without objection. The hearing 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:

Applicant is in his mid-forties and married. He and his wife have one minor child. He served in the U.S. military for seven years, and was honorably discharged in 1994. He holds two associate's degrees, and has held a clearance for over fifteen years.

Applicant's financial trouble started in late 2005, early 2006. He had been working for a federal contractor for six years, when he decided to start his own federal contracting business. Applicant and his business partner secured a line of credit for their new business venture, putting up their homes as collateral for the loan. Applicant secured a substantial contract for the business, but within a year lost the contract. Applicant and his partner were unable to generate other business. Applicant secured part-time work to supplement the meager income he was receiving from the business, but his income was approximately half of what he had earned at his previous job. His income was insufficient to meet his expenses and he exhausted his savings paying the family's recurring bills and debts. He then started relying on his credit cards.

By the fall of 2008, Applicant's business was not generating any income and he did not have other employment. He was essentially unemployed. His wife unexpectedly got pregnant with their only child. Applicant fell behind on the mortgage on his home and the lender foreclosed on the home shortly before his child was born. Applicant, his wife, and their newborn child moved into a friend's basement apartment. Applicant secured full-time work with his current employer in September 2009.

Applicant incurred three types of delinquent debt while unemployed and underemployed: unpaid taxes, past-due credit cards, and past-due student loans. He reached out to his overdue creditors after regaining full-time employment. He has either resolved or is resolving his past-due debts. He submitted documentation that he negotiated a payment plan with the IRS to resolve the delinquent tax debt listed at SOR 1.a and 1.b. He also provided documentary proof that, since April 2012, he has been making monthly payments towards satisfaction of his tax debt.²

Applicant also submitted documentation that the delinquent credit card debts listed at SOR 1.c and 1.d were canceled by the creditors. Before they were canceled,

² Tr. at 48-50; Ax. A – C; Ax. H – J; Ax. O.

Applicant contacted both creditors to resolve the debts. He made consistent monthly payments, totaling about \$3,000, towards the satisfaction of the credit card debt listed at 1.c until he became unemployed for a year. Applicant included the canceled credit card debts as income on his tax returns.³

Applicant resolved the delinquent student loan debts listed at SOR 1.e and 1.f. He rehabilitated his student loans and has been making consistent monthly payments through automatic bank withdrawal for about two years. He has decreased the total amount owed for three of his outstanding student loans from a high of about \$10,000 to roughly \$3,000 through his monthly payments.⁴

Applicant has regained his financial footing. His current annual salary is approximately \$150,000. He contributes to a 401(k) account, with a current balance of over \$25,000. He has another \$5,000 in savings for unexpected expenses. He recently purchased a home, putting down about \$20,000 and financing the remaining \$255,000 purchase price. His current home's purchase price was about half of what he paid for the home he lost through foreclosure. Although Applicant qualified for a much larger mortgage, he made a conscious decision to stay within his family's fixed budget. Applicant has received financial counseling and the family's written budget, which reflects that several recurring expenses and debts are paid by automatic bank withdrawal, shows a monthly surplus of over \$1,000. His wife does not work outside the home, as she cares for their child, who was born with special needs.⁵

Applicant testified that seeing his then eight-and-a-half month pregnant wife packing their former home was "an extreme wake-up call." He has taken steps in the past few years, namely, agreements with his overdue creditors, financial counseling, and budgeting, "to ensure that this would never happen to [his] family again."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

³ Tr. at 44-45, 53-56, 65-68; Ax. D; Ax. O.

⁴ Tr. at 51-52; Ax. E – G; Ax. K.

⁵ Tr. at 56-60, 83-87; Ax. N; Ax. P.

⁶ Tr. at 45.

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. 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.”).

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.⁷

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.

Analysis

Guideline F, Financial Considerations

The potential security concern regarding an applicant with delinquent debts 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

⁷ 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).

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's accumulation of delinquent debt and, of particular concern, his failure to pay his federal tax obligation on time, raises the financial considerations security concern. The record evidence also establishes the following disqualifying conditions:

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

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

The financial considerations guideline also lists a number of conditions that could mitigate the concern. The relevant mitigating conditions 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; and

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

Applicant's past financial problems were due to his failed business venture. Although his decision to leave a well-paying, steady job to attempt to build a business was not a circumstance beyond his control, the resulting business failure was largely beyond his control. At the time that Applicant attempted to start his business, it was largely unforeseeable that the economy would take a dramatic downturn that would last for several years. Notwithstanding his dire financial situation, Applicant did not ignore his financial obligations. After regaining his financial footing, Applicant contacted his creditors and resolved or is resolving his past-due debts. He submitted documentary proof of: (a) contacting his creditors, (b) negotiating repayment plans, and (c) a demonstrated track record of debt repayment. He has received financial counseling, and has exhibited the self-control and judgment in managing his current financial affairs that is expected of those granted access to classified information. For example, he decided to purchase a home that he and his family can comfortably afford on his salary

alone. This record evidence, as well as Applicant's credible testimony, provides sufficient assurance that he will continue to resolve his remaining debts and not repeat the financial missteps of the past. AG ¶¶ 20(a) through 20(d) apply.

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).⁸ Applicant's past financial problems were not a result of matters raising an independent security concern. Instead, they were caused by a business failure, which was partly due to the downturn in the economy. Applicant acted responsibly in trying to manage his finances under the circumstances imposed by his financial hardship, to include moving himself, his wife, and their newborn, special-needs child into a friend's small bedroom apartment while he looked for a job. After securing full-time employment, Applicant contacted his overdue creditors and either resolved or is resolving the past-due debts that he incurred during this period of financial trouble. Although delinquent debts, most notably his past-due taxes, remain outstanding, Applicant has demonstrated through his words and actions that he will manage his finances in the manner expected of those granted access to this nation's secrets. Applicant's maintenance of a clearance without apparent issue for over 15 years, good work performance, and honorable military service provide further evidence mitigating concerns raised by his past financial trouble. Overall, the record evidence leaves me with no questions or doubts about Applicant's security clearance eligibility.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.f: 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 continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

⁸ 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.