



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



In the matter of:)
)
 REDACTED) ISCR Case No. 14-02124
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by his financial circumstances. He has a long history of failing to pay his debts and has accumulated a sizeable amount of delinquent debt. He recently started taking action to address his delinquent debts, but did not present sufficient evidence that his financial situation is under control. Clearance is denied.

History of the Case

On July 18, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.¹ On August 14, 2014, Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

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 (AG) implemented by the Department of Defense on September 1, 2006.

On September 18, 2015, Department Counsel indicated the Government was prepared to proceed with a hearing and forwarded the case to the Hearing Office for scheduling of the requested hearing.² On October 28, 2015, I was assigned the case and, with the agreement of the parties, scheduled the hearing for January 12, 2016.³

The hearing was convened as scheduled. Department Counsel offered exhibits (Ex.) 1 – 4. Applicant testified and offered Ex. A – H.⁴ I granted Applicant's request for additional time post-hearing to supplement the record.⁵ He timely submitted Ex. I and J.⁶ He submitted two additional exhibits, which were marked Ex. K and L, after the deadline for submitting post-hearing matters.⁷ Nevertheless, all exhibits were admitted into the record. The hearing transcript (Tr.) was received by the Defense Office of Hearings and Appeals on January 19, 2016, and the record closed on April 27, 2016.

Findings of Fact

Applicant is in his mid-thirties and is a few credits shy of attaining his undergraduate degree, but is not currently attending college. He is a document analyst for a federal contractor, currently earning a yearly salary of \$40,000. In September 2013, he submitted a security clearance application (SCA) in connection with his job. In response to questions regarding his financial record, Applicant disclosed that his student loans, totaling about \$26,000, had been turned over to collections.

At hearing, Applicant testified that his student loans started becoming delinquent in 2008. (Tr. at 38.) In 2012, after a creditor for one of his delinquent student loans secured a judgment, Applicant agreed to pay \$200 per month to satisfy the judgment.

² The record is silent concerning the 13-month delay between Applicant's request for a hearing and the case being forwarded to the Hearing Office. However, Applicant did not claim, and the evidence does not reflect, he was materially prejudiced from the unexplained delay. As an aside, the above listed Department Counsel only took over the case after it was already scheduled for hearing.

³ Department Counsel's original and supplemental discovery letters to Applicant are attached to the record as Hearing Exhibits (Hx.) I – II. Prehearing scheduling correspondence, the notice of hearing, and the case management order are collectively attached as Hx. III.

⁴ Ex. H is a list of references and their contact information. Applicant was advised that he had the right to call witnesses at the hearing and, if a witness was not available, he could submit a letter from the witness. The record was left open post-hearing, in part, to provide him the opportunity to submit letters from his references. Tr. at 8-13, 25-29, 65; Hx. III. No such letters, beyond the two collectively marked and admitted as Ex. G, were offered.

⁵ The original deadline for submitting post-hearing matters was January 26, 2016, but was extended at Applicant's request to February 5, 2016. Post-hearing correspondence is attached to the record as Hx. IV.

⁶ Ex. I is an e-mail from Applicant, dated January 26, 2016, without attachments; while, Ex. J consists of an e-mail from Applicant, dated February 5, 2016, with three attachments.

⁷ Ex. K consists of an e-mail from Applicant, dated February 12, 2016, with mortgage-related documents regarding SOR 1.c and 1.d; while Ex. L is an e-mail, dated April 27, 2016, without attachments. Although the exhibits were submitted after the deadline, I have excused the late filing and considered the exhibits.

Applicant admits that he failed to abide by the terms of the agreement, missing about 10 to 15 payments since 2012. As of the hearing, he had not made the required \$200 monthly payment since approximately February 2015.

Post-hearing, Applicant worked out a new agreement with the judgment creditor, agreeing to pay \$500 a month beginning on February 9, 2016. Although Applicant submitted numerous documents after the deadline for submitting post-hearing matters, he did not submit documents reflecting that he actually made the required \$500 monthly payments. Applicant's delinquent student loans, which total about \$45,000 and are referenced at SOR 1.a and 1.b, remain unresolved. (Tr. at 37-40; Ex. 1 at 29-30; Ex. 2-4; Ex. B; Ex. D; Ex. E; Ex. J)

Applicant's financial problems go beyond his delinquent student loans. In 2006, he was approached by a former high school friend about a potential real estate investment opportunity, whereby Applicant would, on paper, purchase a distressed home that the owners could no longer afford. Applicant's friend would help him (Applicant) procure the necessary loans to finance the purchase. The plan was to allow the owners to remain in the property, and they would purportedly pay the mortgage loan(s) and potentially some amount to Applicant as rent. Sometime later the property would be sold in the then-hot real estate market and Applicant would receive some amount of the sale proceeds as profit for his investment. Applicant, who was in his late twenties at the time, agreed to the plan and purchased a property for about \$600,000. The first mortgage payment of \$3,400 was due in October 2006. Applicant never made a mortgage loan payment.

Applicant testified that in about 2007 he became aware that his former friend was involved in a multi-million dollar fraud that he had unwittingly become a victim of. At one point during his testimony, Applicant claimed that his former friend forged his name on the closing documents. He later testified that he just signed what his friend told him to sign. (*Compare*, Tr. at 30, lines 14-15, *with*, Tr. at 58, lines 13-17.) He further testified that he does not recall whether he signed any closing documents declaring he was purchasing the property as his primary residence, but stated unequivocally that he would never purposefully sign any document stating that he was going to live in the property. (Tr. at 58-59)

Post-hearing, Applicant submitted the closing documents from the 2006 purchase. The closing documents include an "Occupancy Statement," whereby Applicant stated "under penalty of perjury" that:

I/We will occupy the subject property as my/our principal residence as required by, and in compliance with, the terms of the Deed of Trust/Mortgage/Security Instrument relating to the subject property.

Applicant's signature as sole borrower on the Occupancy Statement, Ex. K, is similar to the signature appearing on his security clearance application, Ex. 1.

Applicant recently took steps to resolve the mortgage-related debt for the 2006 (fraudulent) purchase. He initially agreed with the creditor to resolve the debt through a deed-in-lieu, but after consulting with an attorney backed out of the agreement. He now claims to have resolved the more than \$400,000 debt through a short sale. He provided no documentation to substantiate his latest claim of resolving the mortgage-related debt. As of the close of the record, the mortgage-related debt, which is referenced at SOR 1.c and 1.d, remains unresolved. (Ex. F; Ex. I – Ex. L.)

In December 2015, Applicant moved in with his parents to save money on rent and other expenses. He estimates that this recent move will allow him to have an additional \$700-\$800 every two weeks in disposable income, which he can use to pay his debts. He has not received financial counseling and, as of the hearing, had some unpaid, past-due state tax debt totaling about \$300.⁸ (Tr. at 53-57.) He submitted letters from his parents and a co-worker reflecting their opinion of him as a trustworthy individual and a good employee. (Ex. G)

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. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, 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.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). 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, recognizing the difficulty at times in making suitability determinations and the paramount importance

⁸ The state tax debt is only being considered in assessing Applicant’s mitigation case and whole-person.

of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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’s past financial lapses and current financial situation raise the financial considerations security concern. He incurred a significant amount of debt and was, at first, unable and then for many years unwilling to pay his debts. He only started to repay some of his student loans after a creditor secured a judgment. Even after the judgment creditor agreed to a reasonable repayment schedule to resolve the debt, Applicant failed to abide by the terms of the agreement. As of the hearing, Applicant had failed to make the required monthly payments to the judgment creditor for nearly a year. His recent efforts to resolve his longstanding delinquent debt appears to be far more attributable to his desire to gain a security clearance, which is required for continued employment, than a willingness to comply with his legal, financial obligations. Overall, this record raises the concern that Applicant would handle his security obligations in the same manner that he has handled his financial obligations. Additionally, the record evidence establishes the disqualifying conditions at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The guideline also lists a number of conditions that could mitigate the financial considerations security concern. The following mitigating conditions are most relevant:

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 which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's position that he was the innocent victim of his former friend's massive real estate fraud was not completely consistent with the record evidence, nor fully persuasive. Although Applicant's unrealistic expectations of an ever-increasing real estate market that would remedy the fundamental flaws in his purchase of a property that he could not possibly afford appears now, with the benefit of hindsight, reckless, at the time his financial decision was far from the outlier. Yet, nearly ten years have passed since he became aware of the fraud, and he took no action to resolve the mortgage-related debt until it became a potential impediment to his receipt of a security clearance. Furthermore, even setting aside the mortgage-related debt, the record evidence regarding the student loan debt and, more precisely, the lack of consistent debt repayment of the judgment debt raises unfavorable inferences regarding Applicant's suitability for a security clearance.

Applicant's delinquent debts remain an ongoing, significant security concern. He failed to present sufficient information that his current financial situation is under control and that if financial issues arose in the future he will handle them in a responsible manner. Therefore, I find that none of the mitigating conditions apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.⁹ Applicant failed to meet his burden.

⁹ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

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 all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F. Several years ago Applicant incurred debt that he did not have the means to repay. The circumstances under which he incurred the mortgage-related debt, and his failure to abide by the terms of an agreed-upon repayment schedule to pay one of his student loan debts, raise concerns regarding his overall eligibility. Applicant's presentation was insufficient to overcome the negative security clearance implications raised by the evidence. Overall, the record evidence leaves me with doubts about his present eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

Conclusion

In light of the circumstances presented by the record in this case, 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