



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-04041
)	
Applicant for Security Clearance)	

Appearances

For Government:
Benjamin Dorsey, Esq., Department Counsel
Tovah A. Minster, Esq., Department Counsel

For Applicant: *Pro se*

01/14/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his financial situation. He failed to timely file and pay his federal and state income taxes. He also incurred over \$11,000 in delinquent consumer debt. He recently took action to resolve his tax situation, but it is insufficient to mitigate security concerns raised by his long track record of failing to meet his financial obligations. Clearance is denied.

Statement of the Case

On October 21, 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 On November 10, 2014,

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.

Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information.

On May 12, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for August 4, 2015.² The hearing was convened as scheduled.

At hearing, Department Counsel offered three exhibits (Ex. 1 – 3). Applicant testified and offered three exhibits (Ex. A – C). All exhibits were admitted into the record without objection. The hearing transcript (Tr.) was received on August 13, 2015.

Findings of Fact

Applicant is married with one child. He is currently pursuing an undergraduate degree in cyber security. He has been with his current employer since December 2012, and this is his first application for a security clearance.

Applicant started a home improvement business with a friend around 2002. He failed to set aside a sufficient amount to pay his federal and state income taxes, and did not file his federal and state tax returns for tax years 2005 and 2006.

In 2010, the IRS filed a tax lien against Applicant for nearly \$17,000. Applicant reported his failure to file and pay his taxes on his February 2013 security clearance application (SCA), and promised to start repaying the debt in a few months.

In approximately January 2015, Applicant hired an accountant and resolved his tax situation. He submitted documentation that the IRS released the tax lien in April 2015. Applicant's failure to timely file his federal and state tax returns for tax years 2005 and 2006, and the federal tax lien are alleged at SOR 1.a, 1.b, and 1.e.³

Applicant's home improvement business failed around 2008 when the housing market collapsed. He was unemployed and underemployed for some time until securing his current job in December 2012. While unemployed and underemployed, Applicant relied on credit cards to pay for his wedding and other expenses. He eventually defaulted on his credit cards. His credit card debt, as reflected at SOR 1.c, 1.d, and 1.f, totals over \$11,000. In addition to his delinquent credit card debt, Applicant has a past-due \$55 parking ticket referenced at SOR 1.g. Applicant listed his delinquent credit card debt on his SCA, and noted that he was not in a financial position to resolve his debts until being hired by his current employer.

In 2015, Applicant's accountant advised him to wait until his past-due debts dropped off his credit report before contacting his overdue creditors to resolve his debts.

² Prehearing correspondence with the parties scheduling the hearing date and discussing other matters is included in the record as Hearing Exhibit (Hx.) I.

³ SOR 1.a and 1.b were amended to properly reflect the correct tax years that Applicant failed to timely file. See Tr. at 26-38, 36-42, 51-53; Ex. 1 – 3; Ex. A.

Applicant testified that he has set aside money to pay these debts and promised to resolve them once they fall off his credit report. As of the close of the record, the four delinquent debts referenced in SOR 1.c, 1.d, 1.f, and 1.g remain unresolved.⁴

Applicant has not received financial counseling. He claims that, after paying his monthly expenses, he has approximately \$600 in discretionary monthly income. One of the SOR debts, the \$103 delinquent credit card debt referenced in SOR 1.g, fell off his credit report about a month before the hearing. After the debt fell off his credit report, Applicant did not contact the creditor to resolve the debt.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 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 (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 due process proceedings are conducted “in a fair, timely and orderly manner.” Directive ¶ E3.1.10. Judges make certain 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 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. See *also* ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009),

⁴ Tr. at 28-30, 36-37, 42-48; Ex. 1.

⁵ Tr. at 46-51, 56-67.

“[o]nce 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.

Analysis

Guideline F, Financial Considerations

The security concern regarding an individual who fails to pay their financial obligations and incurs delinquent debt 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. . . .

The financial considerations 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.”⁶ The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant incurred a significant amount of delinquent debt, in part, due to a business failure. However, Applicant’s failure to file and pay his federal and state taxes preceded this situation. He did not address his tax situation for years, even after the IRS filed a tax lien. He only took action to resolve the tax lien after the issuance of the SOR. Additionally, notwithstanding full-time employment for over three years and previous promises during the security clearance process to address his delinquent credit card debt, Applicant has yet to address these debts, including a relatively minor \$103 debt. This record evidence raises the financial considerations security concern, and 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

⁶ 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).

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

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

Applicant's financial problems are partly attributable to matters beyond his control. He also receives some credit for recently resolving his tax situation. However, AG ¶¶ 20(b) and 20(d) do not fully apply. The timing of when Applicant resolved his longstanding tax situation strongly suggests that it was motivated by a desire to secure a security clearance, not fidelity to his financial obligations and the obligation of all citizens to timely file and pay their taxes.⁷ Furthermore, a significant amount of delinquent debt remains unaddressed, to include a minor \$55 parking ticket. Applicant's promise to address these debts in the future is not the same as a demonstrated track record of debt repayment sufficient to demonstrate that he currently handles and will continue to manage his financial obligations in a manner expected of those granted access to classified information.⁸ AG ¶¶ 20(a) and 20(c) do not 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 this nation's secrets.⁹ Applicant failed to meet his burden.

⁷ ISCR Case No. 12-02315 at 3 (App. Bd. Aug 8, 2014).

⁸ ISCR Case No. 14-03069 at 3 (App. Bd. Jul 30, 2015); ISCR Case No. 14-00714 at 3 (App. Bd. May 27, 2015).

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 an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁰ I hereby incorporate my Guideline F analysis.

Applicant has started to make inroads in resolving his longstanding financial issues. However, a significant amount of delinquent debt and the security concerns arising from that debt remain unaddressed. Moreover, Applicant's failure to address his tax situation until recently continues to raise a concern about his suitability for a security clearance. See ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Appeal Board explains that failure to file and/or pay taxes raises significant concerns because "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.") Overall, the record evidence leaves me with doubts about Applicant's current 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.g: **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

¹⁰ The non-exhaustive list of 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.