



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-06830
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant, a prospective employee of a defense contractor, failed to mitigate security concerns raised by his unresolved delinquent debts. He failed to supply any supporting documentation reflecting what steps, if any, he has taken to address his past-due debts and take control of his finances. Clearance is denied.

Statement of the Case

On July 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), alleging that his circumstances raised security concerns under the financial considerations guideline.¹ Specifically, the SOR alleges six delinquent debts and a foreclosure. On August 28, 2015, Applicant answered the SOR, admitted all the SOR allegations, waived his right to a hearing, and elected to have his case decided on the written record. (Exhibit 1)

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

On September 18, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains five exhibits (Ex. 1 – 5) that are admitted without objection into the record. In the FORM, Department Counsel argues that “[a]bsent compelling documentation that Applicant has made financial arrangements and carried them out to meet his past due financial obligations” he has failed to meet his burden in establishing his eligibility for classified information. Department Counsel goes on to advise Applicant that he has 30 days from the receipt of the FORM to submit documentation in support of his case. He was similarly advised in a cover letter accompanying the FORM. See FORM at 3; Hearing Exhibit (Hx.) I.

On October 5, 2015, Applicant acknowledged receiving the FORM. He submitted a one-page response, wherein he notes that he was in the process of resolving his delinquent accounts; but did not supply any supporting documentation to corroborate his claims. Applicant’s Response is admitted without objection as Ex. 6.

On December 1, 2015, I was assigned Applicant’s case. On my own motion, I opened the record to provide him a final opportunity to submit documentation to corroborate his claims that he was addressing his past-due debts. See Hx. II. Applicant did not to submit any additional information or documentation, and the record closed on December 15, 2015.

Findings of Fact

Applicant is a high school graduate with a degree from a technical school. He was employed from 1993 to 2012 by a casino, but was fired for “creating a hostile work environment.” (Ex. 2) During his security clearance background interview, Applicant explained he was fired by the casino for making disparaging comments about a “high roller,” who was the ex-husband of his then girlfriend. (Ex. 3) After being fired, Applicant was unemployed for approximately 18 months. In March 2014, Applicant completed and submitted a security clearance application in connection with his prospective employment with a defense contractor. He has not held a security clearance in the past.

Applicant claims that his financial problems largely relate to his past marriage. He twice refinanced his home to pay for debts incurred by his former wife. (Ex. 3) In his Answer, Applicant claims that his ex-wife refinanced the home without his permission at a high interest rate at a time when housing prices were rising. He was unable to keep up with the new mortgage payments, defaulted on the mortgage obligation, and the home was foreclosed. In his security clearance application, Applicant disclosed his delinquent mortgage debt and noted that he was \$12,000 in arrears. A judicial foreclosure order reflects that the house was foreclosed in 2014. As of the date of the foreclosure, Applicant owed over \$200,000 on the property. The home’s fair market value was approximately \$156,000. (Ex. 6) Applicant states in his Answer and Response that the resolution of this matter is still pending. In his Response, Applicant claims that he is in the process of resolving the six delinquent SOR debts, including a \$3,400 state tax lien. He did not supply documentation to corroborate his claims, nor regarding whether he has received financial or debt counseling.

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 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), “[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.

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 security concern regarding individuals who accumulate and fail to address 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.”² 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.

The record evidence reflects that Applicant has a history of not meeting his financial obligations and, at a minimum, has been unable to pay his debts. This record evidence raises the financial considerations security concern and establishes the disqualifying conditions at AG ¶¶ 19(a) and 19(c).

The financial considerations guideline lists a number of conditions that could mitigate the 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;

² 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 ¶ 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 and provides documented proof to substantiate the basis of the dispute.

Applicant's financial situation appears to be attributable to problems in his former marriage and 18-months of unemployment. Assuming such matters were largely beyond his control, Applicant did not supply supporting documentation of what, if any, steps he took to resolve his delinquent mortgage debt before his former home was foreclosed and is currently taking to resolve his past-due debts. Accordingly, I find that AG 20(b) is partially applicable. Based on the record before me, none of the other 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 this nation's secrets.³ Applicant failed to meet his burden.

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).⁴ I hereby incorporate my comments under Guideline F. I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's candor about his financial situation throughout the security clearance process. Furthermore, as already noted, his finances were negatively impacted by a failed marriage and termination from a long-held job followed by 18 months of unemployment. He claims that, notwithstanding these matters, he has acted responsibly in addressing his past-due debts. Yet, after repeatedly being advised of the

³ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁴ 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.

need to supply supporting documentation, he did not submit any documentation to corroborate his claims. Accordingly, after weighing the favorable and unfavorable evidence, Applicant's past-due debts and recent foreclosure of his home continue to raise a security concern. Overall, the record evidence leaves me with doubts and questions about his 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