



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-06175
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He currently owes more than \$45,000 in delinquent debt. Although his financial trouble was due to a period of unemployment, he has been with his current employer for nearly three years and failed to establish that his financial situation is under control. Clearance is denied.

Statement of the Case

On December 14, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline F (Financial Considerations).¹ On January 18, 2012, Applicant answered the SOR and requested a decision based on the written record.

¹ DOHA took this action under Executive Order (EO) 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 (AG) implemented by the Department of Defense on September 1, 2006.

On April 30, 2012, Department Counsel submitted the Government's File of Relevant Material (FORM).² Applicant received the FORM on May 8, 2012. He had 30 days within which to file a response and any objections to the FORM. He did not submit a response or objections. I was assigned the case on July 2, 2012.

Findings of Fact

Applicant is in his early thirties. He is separated from his wife and has four young children. He served in the U.S. military from 1997 to 2003. After voluntarily separating from the military and receiving an honorable discharge in December 2003, he was unemployed until July 2004. He started working as an aircraft mechanic for his current employer in September 2009. He has also been working at a part-time job since March 2006. He was previously granted a security clearance in 1998. (GE 5; GE 7)

Applicant accumulated a significant amount of debt after his voluntary separation from the military in 2003. He made little to no effort to resolve most of his debts until 2010. Applicant disclosed his financial issues on his current security clearance application, including that he had fallen behind on his child support obligation and had defaulted on his base exchange credit card. These debts were satisfied through the garnishment of his wages and a tax refund. Applicant discussed his financial problems with a federal investigator in April 2010, and during the interview claimed that he had secured the services of a private debt consolidation firm to help him resolve his debts. (GE 5; GE 7)

Applicant admits that he currently owes over \$45,000 to 19 different creditors. (SOR ¶¶ 1.b – 1.m, 1.o – 1.s, 1u – 1v) Applicant claims that six accounts, totaling \$7,002, are included with his debt consolidation program. (SOR ¶¶ 1.b, 1.d, 1.f, 1.g, 1.i, and 1.v) He did not submit documentation regarding the debt consolidation program or to support his claim that the \$925 debt listed in SOR ¶ 1.a has been satisfied. Applicant did previously submit documentation showing that he had started to repay his delinquent student loans, but failed to submit documentation showing the current status of the loans. (SOR ¶¶ 1.f – 1.h) He previously disputed the debt in SOR ¶ 1.k, a delinquent car loan for nearly \$12,000 that his wife is purportedly solely responsible for paying. He did not submit documentation to substantiate this dispute and admits this debt in his Answer. Applicant's recent personal financial statement (PFS) shows that he has a substantial sum of money left over each month after paying his bills, but the PFS does not indicate that any payments are being made towards the resolution of his longstanding, past-due debts. Applicant did not submit proof that he has taken a financial counseling course.³ (GE 4; GE 5; GE 7)

² The FORM contains the Government's position and ten documentary exhibits. Government Exhibits (GE) 1 through 10 are admitted into the record without objection.

³ The SOR alleges a \$3,837 delinquent debt in ¶ 1.t and two unpaid traffic fines in ¶ 1.w. Applicant denied both allegations and there was no evidence provided to substantiate either allegation. Applicant further denied the \$664 debt in ¶ 1.n, which he disclosed on his SCA and has continuously maintained is paid. Although Applicant failed to provide documentation regarding the satisfaction of this

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 ¶ E3.1.15.⁴ An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, a judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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 and endures throughout off-duty hours. "A clearance adjudication is an applicant's opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country."⁵

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 the 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.

debt, the evidence in the file supports a finding that the debt has been satisfied. Accordingly, I find in Applicant's favor as to SOR ¶¶ 1.n, 1.t, and 1.w.

⁴ ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

⁵ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated in 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.

"This 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's accumulation of over \$45,000 in delinquent debt raises this concern. It also establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

- (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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business

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) (The Guideline F concern "is broader than a concern that an applicant might commit criminal acts in order to pay off his debts. Rather, Guideline F requires a judge to consider the totality of an applicant's circumstances—the reasons underlying his financial problems and his efforts to address them—in order to arrive at a conclusion as to whether the applicant possesses the judgment and self-control required of those who have access to national security information.")

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

None of the mitigating conditions apply. Although Applicant's current financial situation can be traced back to his seven months of unemployment following his discharge from the military, his decision to separate from the military was a voluntary one.⁷ Furthermore, he has been continuously employed since July 2004 and has been with his current employer for nearly three years. His current PFS shows that he has a substantial monthly remainder, but does not indicate that any payments are being made toward the satisfaction of his longstanding, past-due debts. Thus, even if I were to assume that Applicant's unemployment was a matter largely beyond his control, he failed to establish that despite this financial setback he acted responsibly with respect to his financial obligations.⁸ He also failed to submit documentation showing that he is resolving his past-due debts, has a reasonable basis to dispute the debts at issue, or has put his financial house in order.⁹ In short, Applicant's financial situation remains a security concern.

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 considered the favorable and extenuating factors in

⁷ ISCR Case No. 09-08108 (App. Bd. Feb. 15, 2011) (an applicant's decision to voluntarily change jobs or relocate, which results in loss income and/or higher expenses, does not amount to a financial problem that was "largely beyond the person's control").

⁸ ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008) (application of mitigating condition 20(b) is only warranted when an applicant demonstrates that he or she acted responsibly with respect to their finances despite the issues outside of their control that impacted their financial situation).

⁹ See ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue).

¹⁰ The 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

this case, including Applicant's honesty during the security clearance process, his honorable military service, and that he previously held a security clearance. However, he has a substantial amount of unresolved debt and failed to dispel the significant security concerns raised by his financial situation.¹¹ Therefore, the favorable whole-person factors present in this case do not outweigh these concerns. Hopefully, Applicant will be able to address his financial situation in the near future and provide proof of a track record of responsible conduct regarding his financial obligations. However, at this time, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o – 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u – 1.v:	Against Applicant
Subparagraph 1.w:	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 access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

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.

¹¹ See *generally* ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) (an applicant's honesty and "[e]ven years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").