



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-07301
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He owes more than \$22,000 on eight separate, delinquent accounts, which date back to 2008. Although his financial situation is partially attributable to being unemployed for 10 months, he has been with his current employer since May 2009. He failed to submit proof that he has addressed his delinquent debts and that his financial situation is under control. Clearance is denied.

Statement of the Case

On October 19, 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 The SOR alleges a number of delinquent debts and a

¹ DOHA acted 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.

2003 bankruptcy.² On November 16, 2011, Applicant submitted his Answer and requested a decision on the administrative record.

On January 25, 2012, Department Counsel submitted its File of Relevant Material (FORM).³ Applicant received the FORM on February 16, 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 April 17, 2012.

Findings of Fact

Applicant is a 37-year-old senior software engineer, working for a federal contractor. He is married and has a 13-year-old child from a prior marriage. He previously held a security clearance. Applicant submitted his most recent security clearance application in April 2010, wherein he disclosed his financial problems.⁴

Applicant has suffered two periods of financial instability. In 2003, he was forced to file for bankruptcy due to his divorce from his first wife and a two-month period of unemployment. Applicant was then able to manage his finances until 2008, when he was laid off by his former employer. He was unemployed for about 10 months, during which he defaulted on his mortgage, fell behind on his child support obligation, and stopped paying his other creditors. He was able to sell his home, and the lender forgave the deficiency balance owed. His former wife will not seek the past-due child support, because Applicant relinquished his parental rights.⁵

Applicant was able to land a job with his current employer in May 2009. He did not submit proof that he has attempted to resolve his other delinquent accounts. As of the close of the record, Applicant owed \$22,772 on eight delinquent accounts, mostly credit cards that he stopped paying in 2008.⁶

² The SOR also alleges, under ¶ 1.i, a tax debt Applicant *may* incur as a result of receiving a 1099-C following the short sale of his former home. Although Applicant's failure pay the mortgage on his former home does raise a concern, a potential debt that might arise in the future is not disqualifying. Further, contrary to the Government's position, as Applicant denied this allegation, it was the Government who bore the burden to establish that a tax debt was due and Applicant was unable or unwilling to pay the debt. See FORM at 5 and n. 16. In any case, Applicant established that he acted responsibly in satisfying his mortgage and there was no tax liability. Accordingly, I find in Applicant's favor as to ¶ 1.i.

³ The FORM contains the Government's summary of facts, argument, and eight documentary exhibits. Government Exhibits (GE) 1 through 8 are hereby admitted into the record.

⁴ GE 4; Answer.

⁵ GE 4 – GE 6.

⁶ GE 4; GE 5; GE 8 at 7 (proof of \$584 debt in ¶ 1.g); Answer (admits ¶¶ 1.a – 1.f, which together total \$22,188).

Applicant states that he has been unable to make any headway in resolving these delinquent accounts, because: (1) his wife's medical bills; (2) he is financially supporting his in-laws; and (3) his priority is paying back his father a \$16,000 personal loan.⁷ In his Answer, Applicant claims that he had paid down the personal loan to \$3,000 and, after he pays the loan, promises to use \$1,500 in monthly disposable income to tackle his delinquent accounts. However, just two months earlier, Applicant claimed in a notarized interrogatory response that he had only \$1,250 left to pay on the personal loan.⁸ Applicant did not submit documentation regarding this personal loan or his payments towards this non-SOR debt.

Applicant explained his decision to pay back his father before his other creditors and his view that his delinquent debts do not raise a security concern as follows:

Family comes first, and I will not give my father the shaft to pay off big corporations first. I will pay them, but he comes first, the same as my country comes first. If someone approached me and tried to buy information from me, I would call the FBI and that would be the end of it. Money is simply not that important to me.⁹

Applicant has started putting his financial house in order, primarily by cutting his car expense.¹⁰ However, he did not submit proof of financial counseling or a budget.

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

⁷ Answer; GE 6.

⁸ *Compare*, Answer at 1 ("When I moved back to [State A] I owed my father around ten thousand dollars. He loaned me \$16,000 to refinance my house in [State B] at a lower rate. I now owe him around three thousand, and will be done paying him by the end of the year. At that point, I will turn the \$1,500 of disposable income I have every month . . . to paying off these outstanding debts."), *with*, GE 6 at 10 ("My father loaned me \$16,000 dollars . . . and currently I only owe him \$1,250 more.").

⁹ Answer.

¹⁰ GE 6.

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. 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 ¶ E3.1.15.¹¹ An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, 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).

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. 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated 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.

“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.”¹² The concern also encompasses financial irresponsibility, which may indicate

¹¹ 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.”).

¹² ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information. Applicant's accumulation of over \$22,000 in delinquent debt, which has been outstanding since 2008, directly implicates 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.

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹³ Accordingly, 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 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of the mitigating conditions apply. Applicant's financial trouble began four years ago and continues to the present day. Although his financial situation was primarily due to a period of unemployment, he failed to handle his financial obligations in a responsible manner.¹⁴ He has been gainfully employed since May 2009 and failed to submit documentation that he has addressed the delinquent debts that have been outstanding since 2008.¹⁵ AG ¶¶ 20(a) and 20(b) do not apply.

¹³ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

¹⁴ ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008) ("the second prong of MC 20(b) requires that an applicant act responsibly under the circumstances").

¹⁵ 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).

Applicant responsibly addressed his mortgage debt, but has not contacted his other overdue creditors to settle or otherwise resolve his long-standing debt. His promise to start paying his overdue creditors after he satisfies the personal loan to his father is insufficient to demonstrate that he is resolving his financial problem, especially in light of the contradictory statements in the record regarding the status of the personal loan.¹⁶ Applicant has not taken a financial counseling course, and failed to establish that his financial situation is under control. AG ¶¶ 20(b) through 20(d) do not apply. 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).¹⁷ I considered the favorable and extenuating factors in this case, including Applicant's honesty in disclosing his delinquent debts on his security clearance application. However, he has a substantial amount of unresolved debt and failed to dispel the significant security concern raised by his financial situation.¹⁸ The favorable whole-person factors present in this case do not outweigh the security concern at issue. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended due to Applicant's current circumstances. However, in the future, he may well demonstrate persuasive evidence of his security worthiness.

¹⁶ ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999) ("Promises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions.")

¹⁷ (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.

¹⁸ 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.").

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.g: **Against Applicant**

Subparagraphs 1.h – 1.j: **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