



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-07899
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He currently owes about \$20,000 in delinquent debt to several creditors. Although his financial trouble was due to a period of unemployment and divorce, he has been with his current employer for over two years and failed to establish that his financial situation is under control. Clearance is denied.

Statement of the Case

On February 29, 2012, 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 March 14, 2012, Applicant submitted his Answer to the SOR and, in an e-mail dated March 26, 2012, requested a decision on the administrative 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 17, 2012, Department Counsel submitted the File of Relevant Material (FORM).² Applicant received the FORM on April 30, 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 June 21, 2012.

Findings of Fact

Applicant is in his early fifties. He divorced in 2010 after twenty-plus years of marriage. He has two teenage children from his marriage. One of his children lives with him and the other lives with his ex-wife. (GE 3; GE 6)

Applicant has been awarded several graduate degrees from prestigious institutions, to include: a master's degree in public affairs, a juris doctorate, and a master's of law degree. He worked as an attorney in private practice until 2001, when he accepted an in-house counsel position with a federal contractor. He voluntarily resigned the in-house counsel position in 2008 to accept a job with another federal contractor, but the job offer fell through. He was unemployed for a year and, at the same time, went through divorce proceedings. His bank accounts were frozen by the divorce court and he was forced to rely on his savings to pay his ever-mounting expenses, which now included maintaining two households. He was able to secure part-time employment as a sale associate at a large retail store in the fall of 2009, but it was at a fraction of his prior salary. He was hired by his current employer in December 2009. (GE 3; GE 4; GE 6)

Applicant was granted a security clearance in 2001. He submitted a recent security clearance application in June 2010, wherein he voluntarily disclosed the financial difficulty that he was going through due to his recent divorce and period of unemployment. (GE 3) He also discussed his financial situation during his background interview and in response to DOHA interrogatories. He freely disclosed that he had fallen behind on his mortgage and the home was in foreclosure, but that he was actively working with the lender on a modification. Applicant also noted the he had fallen behind on his rent to his former landlord for the condominium he rented after separating from his wife, but had worked out a payment arrangement with his former landlord. (GE 6; Answer) He did not submit documentary proof of his efforts to resolve his delinquent mortgage or past-due rent.

Applicant's expenses exceeded his income by about \$1,400 from December 2009 to July 2011, when he moved out of the condo. Since moving out of the condo, Applicant claims he slashed his living expenses and has not incurred any further bad debt. (GE 6; Answer) He did not submit proof that he has taken a financial counseling course or other evidence of the steps he has taken to put his financial house in order.

² The FORM contains the Government's position and nine documentary exhibits. Government Exhibits (GE) 1 through 9 are admitted into the record without objection.

Applicant admits that he currently owes 20 different creditors about \$21,589 in delinquent debt. (SOR ¶¶ 1.a – 1.t) Eight of these debts are medical collection accounts totaling \$1,850. (SOR ¶¶ 1.a – 1.b, 1.d – 1.i) The remaining twelve debts, totaling \$19,739, consist of Applicant's delinquent mortgage, past-due rent for his old condo, delinquent credit cards, and other past-due accounts. Applicant further admits that these delinquent debts remain unresolved, but that he now lives within his means and is committed to resolving his delinquent debts in the near future.³ (See Answer)

Applicant summarizes his position for why he should be granted a clearance as follows:

Although I'm not proud that I got myself into this mess, I don't hide from it and it's not a secret or a source of blackmail or anything like that. I think people are generally aware that I don't have the money I used to have because of hard times in my life. I did, however, take good care of my kids and gave them as stable an environment as I could . . . and I am very proud of that. I am fiercely loyal to my employer, who gave me a job and a chance to get back on my feet when both of those were hard to come by. I am a proud American, and no one has any basis to question my loyalty, nor do I fear that anyone could force me to act contrary to the interests of my employer or my country. (GE 6, *Narrative*)

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. On the other hand, an applicant is responsible for

³ Applicant denied SOR ¶ 1.u, a purported \$31 delinquency on a music club account that is only referenced in one, old credit report submitted by the Government. Such insignificant debt does not raise a security concern on its own or when considered in examining the totality Applicant's financial situation. Further, in light of the ultimate resolution of this case, I find in Applicant's favor as to this debt.

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, 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. “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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated in AG ¶ 18, as follows:

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.

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).

“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 nearly \$20,000 in non-medical, delinquent debt touches on 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.

Further, Applicant admitted that he lived beyond his means from December 2009 to July 2011, which raises AG ¶ 19 (e), to wit: “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, *significant negative cash flow*, high debt-to-income ratio, and/or other financial analysis.” (emphasis added)

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.

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.”)

Applicant's financial situation was due to his recent unemployment and divorce. However, he has been gainfully employed since December 2009 and failed to submit proof that he has resolved or is resolving the debts he accumulated during his period of financial distress. An applicant is not required to be debt-free or required to pay off all debts immediately or simultaneously to demonstrate that they have the requisite judgment and reliability expected of those granted access to classified information. Instead, an applicant must demonstrate that, given his or her circumstances, they have developed a reasonable plan to resolve their financial issues and submit documentary proof of their actions to effectuate the plan.⁷ Applicant has failed to do so. He admits that the debts he amassed during his period of financial turmoil remain unresolved and failed to submit documentary proof of the efforts he has made to put his financial house in order. Thus, I find that AG ¶ 20(b) applies in part, but none of the other mitigating conditions apply. Applicant failed to mitigate the concern raised by his finances.

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).⁸ I considered the favorable and extenuating factors in this case, including Applicant's honesty during the security clearance process, his impressive academic and work accomplishments, and his devotion to his children. However, he has a substantial amount of unresolved debt and failed to dispel the significant security concerns raised by his financial situation.⁹ The favorable whole-person factors present in this case do not outweigh these concerns. Hopefully, Applicant will be able to address his financial situation and provide proof of a track record of fiscally responsible conduct in order to re-establish his security worthiness in due course. However, at this time, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

⁷ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009). See *also* 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).

⁸ 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 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.

⁹ 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.t: **Against Applicant**
Subparagraph 1.u: **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