



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-00032
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He accumulated over \$125,000 in bad debts and failed to establish that his financial situation is under control. Clearance is denied.

Statement of the Case

On August 8, 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 August 31, 2011, Applicant submitted his Answer to the SOR and requested a decision on the administrative record.

¹ DOHA took this action 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.

On October 27, 2011, Department Counsel submitted its File of Relevant Material (FORM). The FORM contains Government Exhibits (GE) 1 through 12, which are admitted without objection. Applicant responded to the FORM (Response) by undated memorandum. He submitted ten documents, which are marked and admitted as Applicant's Exhibits (AE) 1 through 10. I was assigned the case on January 3, 2012.

Findings of Fact

Applicant is a 41-year-old systems engineer, who has been working for his current employer since July 2000. He attained his undergraduate degree in 2000 and master's degree in 2005.² His recent performance reports indicate that he is an excellent employee, who is "[v]ery dedicated and flexible, frequently working weekends . . . and double shifts to meet short notice (assignments) . . . (he) takes on challenging tasks and works them to completion."³

Applicant divorced in 2007 and has two teenage children, ages 14 and 15. He attributes his financial trouble to his divorce, which left him responsible for the marital debts. He has less money to pay the substantial debts from the marriage due to child support obligation and inability to claim his children as dependents on his taxes.⁴

Applicant was able to meet his expenses and the monthly payments due on the marital debts until about mid-2008. He sought the advice of a credit counseling agency (CCA) in approximately May 2008. Applicant's budget at the time reflected that he had over \$89,000 in bad debts and was running a deficit of over \$1,800 a month. He was unable to afford the payment plan proposed by the CCA to resolve his debts. The CCA recommended that he file for Chapter 13 bankruptcy and he completed a pre-bankruptcy counseling session. Applicant did not follow the CCA's advice.⁵

Applicant disclosed his financial situation to his facility security officer in September 2010. He then discussed his finances with a government investigator in October 2010. Applicant's finances had stabilized by October 2010 to where he had over \$300 a month in disposable income. In June 2011, Applicant answered a DOHA interrogatory that requested information about his financial situation. Applicant submitted a personal financial statement showing that he had over \$700 a month in discretionary income. He also provided settlement letters that he had received from his overdue creditors. He had not paid any of the debts, but was hoping to do so in the near future. Applicant also anticipated being granted full custody of his children in April 2012, which would free up money to pay his debts.⁶

² GE 5.

³ AE 3 at 1.

⁴ GE 5; GE 6; Answer; Response.

⁵ GE 6; GE 12; Response; AE 5.

⁶ GE 5; GE 6. See *also* Response.

The SOR alleges nearly \$160,000 in bad debt. Applicant paid two of the smaller SOR debts totaling over \$2,500 (SOR ¶¶ 1.h and 1.j),⁷ and established that one of the alleged debts is listed twice on the SOR (SOR ¶¶ 1.e and 1.g).⁸ Applicant is currently indebted to seven creditors for over \$127,000.⁹ He has been offered settlements that would bring the total amount past due down to around \$65,000, but is unable to afford the lesser amounts offered by his overdue creditors.¹⁰ His savings account has a balance of over \$6,000, and his goal is to mitigate at least ninety percent of his outstanding debt by the end of 2012.¹¹

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 presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." Directive ¶ E3.1.15.¹² An applicant has the ultimate burden of persuasion to obtain a favorable security decision.

⁷ Applicant paid the \$2,366 debt alleged in ¶1.h and the \$225 debt alleged in ¶1.j. Answer; FORM at 4. He claims that the debt for \$2,812 in ¶1.k is the same as the debt in ¶1.h that is now satisfied. In light of Applicant's honesty throughout the security clearance process, I find that ¶1.k is a duplicate of the paid debt alleged in ¶1.h.

⁸ Answer; FORM at 4.

⁹ Answer; Response.

¹⁰ AE 4.

¹¹ Response; AE 9.

¹² 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.").

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.”¹³

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, 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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant’s accumulation of over \$127,000 in bad debt, which he has been unable to pay 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.

¹³ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

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."¹⁴ 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.

Applicant's financial problems began five years ago when he divorced and continues to the present day. AG ¶ 20(a) does not apply.

Applicant's divorce is a matter outside of his control, but he failed to establish that he acted responsibly under the circumstances.¹⁵ He has been gainfully employed for the entire period and, since at least October 2010, had some disposable income available to address his debts. As of the close of the record, he had not addressed the majority of the debts that he defaulted on in 2008. AG ¶ 20(b) does not apply.

Applicant sought financial counseling in 2008, but was unable to afford the payment plan proposed by the CCA to resolve his debt. He did not follow the CCA's advice to file for bankruptcy and has allowed his debt to increase by about \$40,000. He receives some credit for satisfying a few of his relatively minor debts. However, with over \$127,000 in bad debts, Applicant's financial situation is far from under control. Applicant's promise to resolve his substantial debt by the end of 2012 is not an adequate substitute for a consistent track record of responsible conduct in relation to his

¹⁴ 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).

¹⁵ See generally 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").

finances.¹⁶ AG ¶¶ 20(c) and (d) partially apply, but are insufficient to mitigate the Guideline F concern. 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 and work history. 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.

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant

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.").

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