



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-07174
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He accumulated over \$20,000 in delinquent debt since receiving a bankruptcy discharge in 2002 and has yet to take action to put his financial house in order. Clearance is denied.

Procedural History

On June 15, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). Applicant answered the SOR and requested a hearing (Answer).

On November 14, 2012, Department Counsel indicated the Government was ready to proceed. I was assigned the case on November 29, 2012. After coordinating with the parties, I scheduled the hearing for January 16, 2013.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 through 6, which were admitted without objection. Applicant appeared at the hearing and testified. I left the record open to provide him additional time to submit documents. He submitted a

recent paystub, which was admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received the transcript (Tr.) on January 25, 2013.

Findings of Fact

Applicant is a 40-year-old steel worker, working for a DoD contractor since 2009. He is married and has one child. His wife is a school teacher and they own their own home. His mortgage is current and he drives a late-model car. He testified that his net income is \$600 per week before overtime.¹ He acknowledges living paycheck-to-paycheck and, after paying monthly expenses, has no money left to address his delinquent debts. (Tr. at 40-41, 44)

In March 2011, Applicant submitted a security clearance application (SCA) requesting a clearance for the first time. He disclosed a Chapter 7 bankruptcy discharge from 2002 and a number of delinquent debts. (GE 1) The following month, Applicant was interviewed by a Government agent conducting his background interview. Applicant discussed his bankruptcy from 2002, where he had discharged delinquent debts dating back six or seven years. He also discussed his current delinquent accounts, to include a number of judgments and car repossessions. (GE 3) In early 2012, DoD adjudicators sent Applicant an interrogatory requesting an update on his efforts to resolve his delinquent accounts. Applicant responded in April 2012. He had not contacted most of his overdue creditors, but was paying a judgment from 2010 for over \$5,000 through wage garnishment, SOR ¶ 1.b. He also submitted a \$10 payment towards satisfaction of a delinquent bank account for overdraft fees, SOR ¶ 1.q. (GE 2)

At hearing and in his Answer, Applicant admitted the delinquent debts referenced in SOR ¶¶ 1.e – 1.n, 1.q – 1.s, and 1.u – 1.v, which together total over \$18,000. He still had not contacted a majority of his creditors regarding his delinquent accounts, to include the creditor for a car that was repossessed in 2007 and had a current balance of nearly \$11,000. Applicant also admits a judgment from 2008 for \$234 and a \$248 debt for a delinquent payday loan that are referenced in ¶¶ 1.a and 1.d, respectively. He claims that he is unable to locate the creditors for these debts. He submitted proof that the 2010 judgment for \$5,000 in ¶ 1.b was satisfied through wage garnishment, and his wages are now being garnished to satisfy the delinquent credit card debt in ¶ 1.t, with a current balance of approximately \$3,800. He testified that he recently paid \$10 towards the 2007 judgment in ¶ 1.c and the current balance is \$256. He did not submit documentation to corroborate his testimony. He also claims that the delinquent telephone bill in ¶ 1.p is duplicative of another SOR debt, but again did not submit documentation to support his contention. He has not made a further payment towards satisfaction of the delinquent debt in ¶ 1.q since his \$10 payment in April 2012. (Tr. at 23-39, 43; Answer) After excluding the debts referenced in ¶¶ 1.b and 1.p, Applicant's delinquents debt total over \$22,500. He testified that between \$20,000 and \$25,000 of debt was discharged through his 2002 bankruptcy (¶1.o). (Tr. at 33)

¹ *But see*, Ax. A (Applicant's current paystub shows that his weekly net pay is \$45.97 as a result of a federal lien on his wages).

Applicant has not sought financial counseling, but hoped to sit down with a financial counselor after the hearing. He testified that his financial situation was caused by poor financial decisions. He is willing to pay his debts and believes he is now in a position to pay his overdue creditors. (Tr. at 39-40, 45)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability 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 that are to be used in evaluating an applicant’s eligibility for access to classified information. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge must apply the guidelines in a common sense manner and take into account the whole person in reaching a fair and impartial decision. An administrative judge should consider all available and reliable information about the person, past and present, favorable and unfavorable.

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. An applicant has the ultimate burden of persuasion to obtain a security clearance.

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, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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 is merely an indication an applicant has not met the strict guidelines the President and the Secretary of Defense have established for determining eligibility for access to 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.

One aspect of the concern is that an individual who is financially overextended may be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant’s accumulation of over \$20,000 in delinquent debt after having his debts discharged through bankruptcy in 2002, raises this concern and establishes the following disqualifying conditions under AG ¶ 19:

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

An individual’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.”² Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under 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;

² 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).

(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;

(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.

Applicant failed to mitigate the financial considerations concern. Even if I assume that he made recent progress in satisfying the 2007 judgment in ¶ 1.c and the debt in ¶ 1.p is duplicative of another SOR debt, he accumulated a substantial amount of delinquent debt since his 2002 bankruptcy discharge and the debts are on-going. His financial situation was caused by poor financial decisions, not matters beyond his control. AG ¶¶ 20(a) and (b) do not apply. As of the hearing, Applicant had not received financial counseling and had yet to contact the vast majority of his overdue creditors. His satisfaction of the \$5,000 judgment from 2010 and current payment of a delinquent credit card through garnishment do not amount to a "good-faith effort to repay overdue creditors." AG ¶¶ 20(c) and (d) do not apply. Applicant did not dispute the accuracy of the other 21 debts in the SOR, except as to the current balance of some of these debts. His admissions are corroborated through credit reports and other evidence submitted by the Government. AG ¶ 20(e) does not apply.

Although Applicant wants to resolve his debts, he has yet to take any action to resolve his financial situation and display the level of responsible conduct in his personal affairs expected of an individual seeking a security clearance. His failure to follow through with the payment plan to satisfy the relatively minor debt in ¶ 1.q, and the fact that he only made one \$10 payment towards satisfaction of this debt after DoD adjudicators inquired about its status, raises further doubt as to the state of his finances and reliability. In short, Applicant's financial situation remains a concern and continues to cast doubt as to his eligibility for a security clearance.

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).³ Applicant is a hard-working, family man who has been employed by a DoD contractor for over three years. However, he has yet to get a handle on the significant amount of debt that he has accumulated since having his past delinquent debts discharged through bankruptcy. Applicant's current financial situation outweighs the favorable whole-person factors present in this case and raises significant doubts about his eligibility for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q – 1.w:	Against 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

³ The non-exhaustive list of 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.