



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-08203
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He stopped paying on five credit card accounts in 2008 and owes over \$47,000 on these delinquent accounts. He has repeatedly promised the Government that he would resolve his debts and, even though he has been in a position to start repaying his debts for nearly two years, he has yet to make a payment towards resolving his debts. Despite having held a clearance without issue for over 25 years, Applicant’s financial issues cast doubt as to his continued suitability. Clearance is denied.

Statement of the Case

On August 31, 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 Applicant responded to the SOR and requested a hearing before an administrative judge on September 24, 2012.

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 October 18, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on October 31, 2012 and, after coordinating with the parties, scheduled the hearing for November 27, 2012.² At hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and offered two character letters, Applicant's Exhibit (AE) A and B. which were admitted without objection. DOHA received the transcript (Tr.) on December 3, 2012.

Findings of Fact

Applicant is 51 years old, divorced, with one college-age child. He served honorably in the U.S. military from 1979 to 1983. He started working for his current employer, a DoD contractor, in 1986 and was first granted a security clearance at that point. He is thought of highly by his friends and co-workers. (GE 1; GE 2 at 4; AE A – B; Tr. at 24-25)

Applicant's financial trouble started in approximately November 2007, when his former girlfriend was diagnosed with a serious medical condition and became unemployed. Applicant financially supported her for the next 18 months. The financial strain of maintaining two households became too great and he started falling behind on his own bills. He began relying on credit cards and then stopped paying his credit cards in about 2008. Currently, he has five delinquent credit card accounts, with a combined balance of over \$47,000. (Tr. at 20-21, 27-29, 35; GE 2; Answer)

Applicant disclosed his delinquent debts on his recent security clearance application, which he submitted in November 2010. (GE 1 at 35-40) He was subsequently interviewed in December 2010 and May 2011. During both interviews, Applicant promised to resolve his delinquent credit card accounts. As of his last interview in May 2011, Applicant had a net monthly remainder of over \$1,000, but had yet to start repaying his delinquent debts. (GE 2 at 7-11)

In June 2012, Applicant responded to a DOHA financial interrogatory that requested an update on his efforts to resolve his five delinquent credit card accounts. Applicant disclosed that he had sought the assistance of a consumer credit counseling service. The counseling service prepared a debt repayment schedule, but Applicant claims he was unable to afford the proposed debt repayment of \$1,149 per month. Applicant also disclosed in his interrogatory response that his net income had increased by over \$300 a month since his last interview in May 2011, and that his net monthly remainder stood at \$1,140. He attributed his inability to repay his delinquent debts to his voluntary decision to help his daughter pay for college. A credit counselor advised him to reduce his expenses and to speak to a professional about the possibility of filing for bankruptcy. (GE 2)

² The parties received actual notice of the hearing via e-mail on November 5, 2012. However, Applicant did not receive the notice of hearing until November 16, 2012, or nine days before the hearing. Applicant waived the 15-day notice requirement and indicated he was prepared to proceed. (Tr. at 4-5)

Shortly before receiving the SOR, Applicant cut his expenses in half by moving into the basement apartment of a friend. As of September 2012, he had the disposable income to pay the debt repayment schedule proposed by the counseling service. However, he has still not made a payment towards the satisfaction of his delinquent debts, because he is concerned that an adverse security clearance determination would result in losing his job, which would then leave him unable to repay his debts per the terms of the counseling service's repayment schedule. He has not spoken to a professional about pursuing bankruptcy because he wants to resolve his debts and fears the negative security ramifications of a bankruptcy discharge on his record. He has not accrued any additional bad debt and does not have any credit cards. He does not have a savings account, but has accumulated about \$5,000 to \$6,000 in his checking account. (Tr. at 21-24, 28-44)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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. 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. Decisions regarding an applicant's suitability 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 set forth 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 also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's accumulation of a substantial amount of delinquent credit card debt and his unwillingness to repay his debts, when he has had the means do so, 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.

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."³ 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;

³ 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).

(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 situation is partially attributable to his selfless, voluntary decision to assist his former girlfriend when she was ill and out of work. However, he has not managed his financial situation in a responsible fashion. He stopped paying his credit cards in 2008 and, other than the debt repayment schedule that he has never made a payment on, he failed to submit any proof of having contacted his creditors to resolve his debts. He has repeatedly promised the Government he would resolve these debts and, even though his income has steadily increased over the past four years, he has not made any payments towards the satisfaction of his debts. Applicant has sought financial counseling and reduced his expenses, which are significant mitigating actions tending to show that he is starting to put his financial house in order. However, his substantial credit card debt is ongoing and unresolved. Applicant reported that, as of May 2011, after paying his monthly expenses, he had over a \$1,000 a month that he could have used to start repaying his debts. Instead, he took on additional financial obligations. Accordingly, I find that AG ¶ 20(c) partially applies but is insufficient to mitigate the concern at issue.

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).⁴ I have considered all the favorable and extenuating factors in this case. Applicant assisted his former girlfriend during her time of need and now is helping his daughter to pay for her college education so that she will not be saddled with student debt. However admirable such voluntary financial decisions may have been, they call into question Applicant's judgment. Applicant has been on notice for quite some time that his delinquent credit card debt is a concern which could result in the loss of his clearance. Instead of resolving these longstanding debts, Applicant has voluntarily taken on further financial obligations. Applicant does not appear to recognize that he is unable to afford his noble gestures and, thus, the likelihood of recurrence of further financial problems appears high.

⁴ The whole-person 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.

More troubling is the fact that Applicant has had the financial means to, *at a minimum*, start repaying his overdue creditors but has elected not to out of fear of losing his security clearance and, presumably, the job that depends on maintaining a clearance. His refusal to resolve his credit card debts out of concern that he may lose his job and then be held liable for the very same financial obligations he has refused to pay for the past four years speaks directly to the financial considerations concern. An individual who is unwilling to meet his financial obligations may similarly fail to discharge his security obligations. Although Applicant has held a clearance without issue for over 25 years, his short sightedness and refusal to meet his financial obligations raises a serious concern about his judgment and ability to safeguard classified information. Such concern must be resolved in favor of national security.⁵ Overall, the record evidence leaves me with questions and doubts about Applicant’s continued eligibility and suitability for access to classified information.

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.e: **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 continued access to classified information. Applicant’s request for a security clearance is denied.

Francisco Mendez
Administrative Judge

⁵ AG ¶ 2(b). *See also Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“security-clearance determinations should err, if they must, on the side of denials”); ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) (“Even years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt”).