



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-09443
)	
Applicant for Security Clearance)	

Appearances

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

08/17/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. Although his financial situation is, in part, due to matters beyond his control, he failed to act responsibly under the circumstances. He failed to demonstrate that his long track record of financial irresponsibility is no longer a concern. Clearance is denied.

Procedural History

On May 9, 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 May 16, 2012, Applicant answered the SOR and requested a hearing before a DOHA Administrative Judge.

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 June 27, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on July 2, 2012 and, after coordinating with the parties, scheduled the hearing for July 24, 2012. At hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant appeared at the hearing, testified, and offered Applicant's Exhibits (AE) A through C. These documents were also admitted without objection. The transcript (Tr.) was received on August 1, 2012.²

Findings of Fact

Applicant is in his fifties. He received his undergraduate degree in electrical engineering in 1984. His stepson died in 2000 and he recently divorced after 18 years of marriage. He currently lives with his father and is thrifty with his money, generally shopping at Goodwill or the 80% discount rack at a local department store. He provided information regarding his charitable endeavors. His family, friends, and coworkers wrote letters attesting to his reliability and trustworthiness.³

Applicant started his own internet business in 1997 and it was successful until 2004. He sold the business to his brother and went into real estate for the next three years. His income decreased sharply from around \$60,000 to approximately \$20,000 to 30,000 per year.⁴ In March 2007, Applicant was able to land a job as a software developer at a yearly salary of approximately \$95,000. In October 2008, Applicant voluntarily decided to accept an offer from a small business to become its firmware developer at the same yearly salary of \$95,000. Five months later, in March 2009, Applicant quit his new job because he had not been paid his salary in approximately six weeks. Applicant was unemployed for the next two months. He was able to secure work as a tutor, which only paid him around \$12 to \$15 per hour. He supplemented his income as a tutor with other part-time work. His income from 2009 to 2011 was between \$15,000 and \$20,000. Applicant started working for his current employer in April 2012, at an annual salary of \$105,000.⁵

Applicant submitted his security clearance application in March 2011. He disclosed that he had financial issues, to include: (1) a \$18,000 federal tax debt due to his failure to file his tax returns for tax years 2002 through 2009, (2) over \$2,000 in state

² At hearing, Applicant raised for the first time that he had not received his investigative file. I offered him the opportunity to keep the record open, in order to allow him time to receive the file and submit additional matters for my review. Applicant declined the offer and asked that I close the record at the conclusion of the hearing. (Tr. at 16-21, 121, 136)

³ Tr. at 65-66, 78-79, 109-111; GE 2; AE B - C.

⁴ *Compare*, Tr. at 68 ("Q: And you can't estimate approximately how much you made, say, in 2002 to 2004? A: I could believe \$60,000. Q: Each year? A: Yes."), *with*, GE 3, *Tax Returns for 2002-2004* (Applicant claimed to IRS that his adjusted gross income during same period was between \$2,945 and \$38,166).

⁵ Tr. at 49-51, 67-78, 107-108; GE 2; GE 3, *Subject Interview* (SI).

tax liens, and (3) two delinquent credit card accounts with a combined balance of over \$37,500. Applicant stated he was in the process of settling the outstanding federal tax debt and the larger of the two delinquent credit card debts. He promised to resolve all his outstanding debt once he was back on his feet financially.⁶ He noted that the reason for his failure to pay his financial obligations on time was due to his unsteady employment history. He specifically stated that he had “kept in touch” with the creditor for “the biggest credit card debt and they have offered to settle for 10 cents on the dollar” – the balance owed on this credit card account exceeded \$28,500.⁷

Applicant settled his \$18,000 federal tax debt for \$1,000. He satisfied the federal tax debt in September 2011. As part of the settlement agreement with the IRS, Applicant is required to file and pay his taxes in a timely fashion for five years. Applicant explained that he failed to file his federal tax returns for tax years 2002 through 2009 because in about 2002 he fired his accountant in an attempt to cut back on business expenses and his computer, which contained tax information regarding his former business, malfunctioned. Applicant testified that he filed his 2011 tax return on time.⁸

In approximately March or April 2012, Applicant received a substantial monetary judgment as a result of a civil claim he filed against his former employer who had refused to pay him his wages. He used the money to settle and satisfy his remaining delinquent debts. He satisfied the state tax liens in April 2012. The liens were for unpaid taxes from 2005 to 2007.⁹ Applicant admits that he was in part motivated to satisfy the state tax liens because of the inquiries from DOHA regarding their status.¹⁰ Applicant testified that the state tax liens were related to his failed business. He previously told an investigator he had sold the business to his brother in 2004.¹¹ (SOR ¶¶ 1.a – 1.c)

Applicant also used the proceeds from the monetary judgment to settle and satisfy the two credit card accounts that were in collection and together totaled over \$37,500. Applicant settled the lesser of the two credit card accounts for \$6,000. (SOR ¶ 1.d) He settled and satisfied the delinquent credit card account with a balance of over

⁶ GE 2 at 41-52, 56.

⁷ GE 2 at 56.

⁸ Tr. at 46-48, 80-90, 111-119, GE 3 at 129-156. Applicant’s failure to file his 2002-2009 tax returns and subsequent federal tax debt was not alleged in the SOR. As such, I have only considered this information in assessing Applicant’s case in mitigation and addressing the whole-person factors.

⁹ Answer, *Tax Lien Satisfaction*; Tr. at 46-48, 59-60; GE 3 at 124.

¹⁰ Tr. at 90- 91 (“Q: Was your reason for satisfying those tax liens a result of your (sic) having received the interrogatories from the DOHA adjudicator enquiring (sic) into the status of those debts? A: That was a factor.”); GE 3.

¹¹ *Compare*, Tr. at 46 (“Q: And were those debts (state tax liens) initially related to your failed business? A: Yes), *with*, GE 3, SI at 2 (“The subject sold the business to his brother when the dot.com bubble burst in 05/2004).

\$28,500 for less than \$3,500. (SOR ¶ 1.e) Applicant settled these debts, which had been delinquent since about 2005, two weeks before the hearing.¹² At hearing, Applicant claimed that he had previously satisfied both these debts in 2007 but, since he did not have documentation to prove he had paid the debts, he went ahead and paid them again to satisfy the Government's concerns.¹³ He did not contest the validity of the credit card debt for over \$28,500. He previously admitted in his SCA that he owed this debt and claimed that he had "kept in touch" with the creditor, having received an offer to settle the balance owed for less than 10% prior to submitting his SCA in 2011.¹⁴

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. The Government reposes a high degree of trust and confidence in individuals to whom it

¹² GE 5 at 9-11; AE B; Tr. at 28-46, 59-60 (Applicant explained that two separate collection agencies claimed that they were the rightful owner of the debt alleged in 1.d. He paid \$3,000 to each of the agencies and promised to pay the rightful owner the remaining \$3,000 after the hearing. He would then await a refund from the other collection agency).

¹³ Tr. at 42-46, 92-103.

¹⁴ Compare, Tr. at 96-105, with, GE 2, at 53 and 56.

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 in 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."¹⁵ 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 accumulated a significant amount of debt after his business failed in 2004 and his income dropped to half of what he was previously earning. However, he was gainfully employed from March 2007 to at least December 2008 and he did not address his delinquent state tax debt or credit cards. He only addressed the state tax liens after DOHA inquired as to their status and settled the substantial credit card debt, which had been delinquent since at least 2005, shortly before the hearing. This history of financial irresponsibility raises the financial considerations concern and establishes the following disqualifying conditions under AG ¶ 19:

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

¹⁵ 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.")

However, an applicant's past or current indebtedness is not the end of the analysis under Guideline F, 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."¹⁶ 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 situation was, in part, due to matters beyond his control, namely, two significant periods of unemployment and underemployment.¹⁷ However, AG ¶ 20(b) is not fully applicable because, as explained above, Applicant did not address his delinquent debts in a responsible fashion when he had the means to do so.¹⁸

Applicant failed to establish the applicability of the other mitigating conditions under AG ¶ 20. Although he has slashed his living expenses and now lives within his means, his long history of financial irresponsibility and less than candid explanations regarding his finances leaves me with significant doubts regarding his current reliability, trustworthiness, and good judgment. Specifically, in assessing Applicant's case in mitigation, I considered his failure to file his federal tax returns for tax years 2002 to

¹⁶ 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).

¹⁷ Applicant also claimed that his stepson's death and unreimbursed medical expenses contributed to his financial situation. However, he did not establish that the SOR debts were related to these matters. ISCR Case 07-09304 at 3 (App. Bd. Oct. 6, 2008) (applicant bears the burden of establishing nexus between matter outside of their control and inability to pay their debts).

¹⁸ ISCR Case No. 07-09304 at 4 ("the second prong of MC 20(b) requires that an applicant act responsibly under the circumstances").

2009.¹⁹ His testimony that he did not file his tax returns for the entire period because a computer malfunctioned in 2002, which contained tax information related to his former business, was uncorroborated and does not adequately explain his failure to address his federal tax issues for several years, including well after he had sold his business. Applicant did resolve his federal tax debt before the SOR was issued, but settled it for less than ten percent of what he owed the Government. He is now in a five-year probationary type period where he is required to file and pay his federal taxes on time – a legal obligation of all citizens that Applicant deliberately failed to abide by for a lengthy period of time. Applicant’s lengthy history of failing to timely file his tax returns and pay his taxes raises serious concerns as to whether he would comply with Government rules and regulations regarding the proper handling and protection of classified information. His timely filing of one tax return and recent satisfaction of the SOR debts, does not amount to a consistent track record of responsible financial conduct. Applicant’s long track record of financial irresponsibility leaves me with doubts regarding his suitability for access to classified information.

In addition, Applicant’s testimony that the tax liens for unpaid state taxes from 2005 to 2007 were related to his former business, which he previously reported he had sold in 2004, appears to be, at best, misleading.²⁰ His testimony that he had previously satisfied the credit card debt with a balance of over \$28,500 and then paid it again, without contesting its validity, is implausible for it beguiles common sense that someone in Applicant’s shoes would not, at a minimum, raise some objection to having to pay such a substantial debt for a second time. Based on the evidence, I find that Applicant only satisfied the debts at issue in order to get a clearance, not out of any true sense of obligation to pay his just debts. Applicant’s less than forthright explanation regarding his finances and lack of true financial reform raise significant doubt regarding the extent to which his finances are under control and cast further doubt as to his reliability, trustworthiness, and judgment.²¹

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).²² I gave due consideration to all the favorable and

¹⁹ ISCR Case No. 11-05365 at 2-3 (proper for a judge to consider tax debts, which are not alleged in an SOR, in assessing an applicant’s case in mitigation).

²⁰ 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).

²¹ ISCR Case No. 10-08650 at 3 (App. Bd. Dec. 5, 2011) (proper to consider an applicant’s inconsistent and implausible statements regarding his or her debts in assessing an applicant’s credibility and whether they met their burden of persuasion as to mitigation under Guideline F).

²² The non-exhaustive list of 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

extenuating factors in this case, including Applicant's good works and favorable character references. However, this favorable evidence, as well as the other mitigating record evidence, does not outweigh the security concerns at issue. Security clearance adjudications are by their very nature predictive judgments, where an applicant's past history is the best indicator of future conduct. Applicant's lengthy history of financial irresponsibility continues to raise doubts as to his suitability.

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 access to classified information. Accordingly, Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

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.