



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



In the matter of:)
)
 REDACTED) ISCR Case No. 11-09708
)
 Applicant for Security Clearance)

Appearances

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

05/09/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his financial issues. Since 2010, he has accumulated over \$290,000 in delinquent debt and his finances are in disarray. Clearance is denied.

Procedural History

On September 24, 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 January 23, 2013, I was assigned Applicant's case and, after coordinating with the parties, scheduled the hearing for March 6, 2013. At hearing, Department Counsel offered Government Exhibits (Gx.) 1 through 6, which were admitted into evidence without objection. Department Counsel also submitted an exhibit setting forth the debts alleged in the SOR and their current status, which was marked Hearing Exhibit (Hx.) I. Applicant appeared at the hearing and testified. I left the record open to provide him additional time to submit documents. He timely submitted Applicant's

Exhibit (Ax.) 1 through 7, which were admitted.¹ DOHA received the hearing transcript (Tr.) on March 14, 2013, and the record closed on March 28, 2013.

Findings of Fact

After a thorough review of the pleadings, case file, exhibits, and transcript, I make the following findings of fact:

Applicant, 42, is an engineer for a federal contractor. He has worked for his current employer since 2003. He has a master's degree in computer science and is working on his second master's degree in project management. He has held a security since 2000. (Tr. at 23-26, Gx. 1)

Applicant is separated from his wife. He has five children with his wife and a child with his fiancée. They range in age from 3 months to 19. He is currently living with his fiancée in her house, which they share with her two other children, their baby, and Applicant's eldest child from his marriage. Applicant's fiancée is currently unemployed. He provides spousal and child support to his ex-wife and supports the household he shares with his fiancée. His financial problems started when he separated from his wife and filed for divorce in 2010. (Tr. at 26-31)

Applicant stopped paying the mortgage on his former marital residence shortly after he separated from his wife in about April 2010. A few months later, he submitted a hardship application to his lender and then tried to sell the property to resolve his delinquent mortgage to no avail. The house was foreclosed and the lender secured a judgment against Applicant and his wife for \$217,000. Applicant's former home recently sold for about \$114,000, but Applicant did not submit any documentation regarding the status of the judgment and it is still showing as unpaid on his most recent credit report from March 2013. In his Answer, Applicant admits he still owes the \$217,000 judgment (SOR ¶ 1.a). (Tr. at 33-40; Gx. 4 – 6; Ax. 2, Ax. 6, Ax. 7)

Applicant also stopped paying his credit cards and other accounts in 2010. He admits owing over \$75,000 for 11 non-mortgage related accounts (SOR ¶¶ 1.b – 1.g, 1.i – 1.j, and 1.m – 1.o), and a \$362 delinquent medical bill for his children (SOR ¶ 1.k). He currently owes about \$3,500 for his 2011 federal taxes and, as of the hearing, had not contacted the IRS to resolve his tax debt. (Tr. at 41-56, 60-62; Answer; Gx. 1 – 6)²

Applicant has not sought financial counseling. He has tried to put a budget together with his fiancée to better manage their finances, but has been unsuccessful. (Tr. at 69-71) His personal financial statement shows a net monthly remainder of about

¹ Hx. III is the Government's response to Applicant's post-hearing submission. I hereby overrule the Government authentication objections to Ax. 4 and 7, because the objections go to the weight to be attributed the exhibits, not their admissibility.

² The debts alleged in SOR ¶¶ 1.h and 1.l are duplicates with other debts alleged in the SOR, and are decided in Applicant's favor. Applicant's tax delinquency is not alleged in the SOR and is only being considered in assessing his mitigation case.

\$2,000. (Gx. 2, Tr. at 56-59) He testified that he does not have a good idea where his money goes and is not the best person at tracking his own finances. (Tr. at 59-60)

Applicant has not contacted his overdue creditors. He plans to resolve his debts once his divorce is finalized and a court determines which party is responsible for the marital debt. (Tr. at 64-69) As of the hearing, Applicant's divorce was still pending.

Applicant's co-worker, who has known him for nine years, writes that "despite his personal turmoil" Applicant has "remained a stable co-worker" who is "trustworthy and of sound character." (Ax. 3) His recent performance evaluation reflects that he achieves all the goals established by his employer. (Ax. 5)

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 \$290,000 in delinquent debt since 2010 raises the financial considerations concern. It also establishes the disqualifying conditions at AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(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.”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:

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).

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;

20(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;

20(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;

20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

20(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's financial situation is partly attributable to his separation and the three years that his divorce has been pending a resolution. However, he has not taken control of his finances and responsibly addressed his financial problems since separating from his wife in 2010. Other than applying for a hardship waiver and trying to sell his home to resolve his mortgage debt, he has taken no action to address his mortgage-related debt and a \$217,000 judgment remains unsatisfied. He has made no effort to tackle the more than \$75,000 in non-mortgage related debt that he stopped paying in 2010. His delinquent debts are numerous, substantial, and ongoing. Additionally, he has been employed the entire time and his financial situation has progressively worsened due to his inability to manage his finances. He has not sought financial counseling and his finances are in disarray. Accordingly, I find that none of the mitigating conditions apply.

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 Applicant has held a security clearance without issue for 13 years. He has worked for his current employer since 2003 and by all accounts is

⁴ 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.

a reliable, hardworking individual who has been able to get his work done despite his personal travails. However, these favorable whole-person factors do not mitigate the significant security concerns raised by his finances.⁵ After weighing the disqualifying and mitigating conditions, and evaluating all the evidence in the context of the whole person, I conclude that Applicant did not meet his burden to mitigate the security concerns at issue. Overall, the record evidence leaves me with doubts about Applicant's continued eligibility 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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m – 1.o:	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

⁵ 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”).