



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-10612
)	
Applicant for Security Clearance)	

Appearances

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

07/05/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. He has a lengthy history of refusing to pay his financial obligations, stretching back to 1990 and extending to the present day. His financial situation continues to cast doubt on his current reliability, trustworthiness, and good judgment. Clearance is denied.

Statement of the Case

On February 6, 2013, 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). On February 20, 2013, Applicant answered the SOR and requested a hearing (Answer). On April 11, 2013, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing for May 7, 2013.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 through 6, which were admitted into evidence without objection. Hearing Exhibit (Hx.) I is the Government's index of exhibits, which is made part of the record.

Applicant appeared at the hearing, testified, and offered Applicant's Exhibits (Ax.) A and B, which were admitted without objection. At Applicant's request, I left the record open for over 30 days to provide him time to gather and submit additional matters. He timely submitted Ax. C – K, which were also admitted without objection. Hx. II and III are Department Counsel's position as to the post-hearing exhibits, and are included in the record. The hearing transcript (Tr.) was received on May 14, 2013, and the record closed on June 10, 2013.

Findings of Fact

Applicant, 49, is married. He has three adult children and four step-children. He served in the military from 1982 to 2002. After retiring from the military, Applicant was unemployed for about four months. He started working as a federal contractor in 2003, and began working for his current employer in 2008. He has been continuously employed with his current employer for the past five years and his recent performance evaluation rates him as "far exceeds expectations." He was first granted a security clearance in 1983. (Tr. at 21-22, 38; Gx. 1; Gx. 2 at 1, 60, 68-70; Ax. E – F)

Applicant's financial trouble dates back to at least 1990. (Gx. 2 at 54) In 1995, he filed for Chapter 13 bankruptcy to resolve his debts. This first Chapter 13 bankruptcy was discharged in 1999. (Answer)

Applicant's 2005 periodic investigation revealed that he continued to have financial problems following the discharge of his debts six years earlier. (Gx. 2 at 59-78) Applicant discussed seven delinquent accounts, to include three judgments with the investigator. He claimed that his financial problems were related to his four months of unemployment after retiring from the military and the dissolution of his first marriage. He claimed to have resolved his financial problems with the inheritance he had received from his mother's estate in 2003. However, the investigator was unable to confirm the resolution of these debts directly with Applicant's overdue creditors because he refused to provide the necessary releases. (Gx. 2 at 63-65)

In July 2008, Applicant filed for Chapter 13 bankruptcy to resolve his delinquent debts and to save his home from foreclosure. He listed over \$300,000 in liabilities. He failed to pay per the terms of the bankruptcy plan and the bankruptcy was dismissed in March 2009. (Tr. at 40-43; Gx. 5; Gx. 2 at 66) Also in 2009, Applicant took a week-long trip to the Caribbean to play in a poker tournament. (Gx. 2 at 72)

In March 2011, Applicant again filed for Chapter 13 bankruptcy. He listed nearly \$250,000 in liabilities. (Gx. 6) The following month, Applicant submitted his current security clearance application. He did not disclose his 2009 poker trip to the Caribbean. He also did not disclose filing a Chapter 13 bankruptcy petition and that it was dismissed in 2009 for nonpayment. However, he did disclose numerous delinquent debts and the fact that he had recently filed for bankruptcy to resolve the debts. (Gx. 1)

In June 2011, Applicant was interviewed in conjunction with his periodic reinvestigation. He admitted the poker trip, but only after being confronted by the investigator. He denied that gambling was a source of his financial trouble. Instead, he claimed that his current financial trouble was caused by two periods of unemployment in 2006 and 2007, totaling about 11 months. He was initially unemployed in 2006 for five months and defaulted on several of his financial obligations, including his court-ordered child support. Applicant also attributed his financial trouble to a failed private janitorial business that he had started in around 2005. He told the investigator that his current financial trouble would be resolved through the Chapter 13 bankruptcy. (Gx. 2 at 66-78)

In August 2011, the Chapter 13 bankruptcy trustee filed a motion to dismiss Applicant's case because he was already two months behind on payment required by his bankruptcy plan. In March 2012, after providing Applicant an opportunity to remedy his default, the bankruptcy judge dismissed his latest Chapter 13 bankruptcy for failure to make the required debt repayments. (Gx. 6)

At hearing, Applicant explained that at first he was able to afford the proposed Chapter 13 bankruptcy plan. He was initially required to pay \$1,000 per month for 7 months, which would then increase to \$2,500 for 53 months. He testified that he was unable to afford the bankruptcy plan, after the debt repayment amount increased to reflect his actual income. (Tr. at 42-43, 90-93; Gx. 6) However, his personal financial statement (PFS) from October 2012 shows that after paying his monthly expenses he had over \$2,700 in monthly disposable income. (Gx. 2 at 81)

Applicant's three previous bankruptcies in 1995, 2008, and 2011 are listed in ¶¶ 1.a through 1.c of the SOR. In addition to the bankruptcies, the SOR alleges nine delinquent debts totaling over \$30,000. (SOR ¶¶ 1.d – 1.i) Applicant submitted proof that he satisfied a tax lien alleged in ¶ 1.h. At hearing, Applicant claimed that he had satisfied the remaining eight SOR debts, but submitted no documentary proof that they were paid. The eight remaining debts total over \$28,000 and remain unresolved.

The debt in 1.d for \$780 is for a past-due cell phone bill. Applicant admits this debt in his Answer. At hearing, Applicant testified that he satisfied the debt in about 2009. In his post-hearing submission, Applicant claimed he agreed to a settlement offered by the creditor in 2010. He did not submit documentary proof of payment and the debt still appears on his 2012 credit report. (Tr. at 43-45; Gx. 4; Ax. J – K)

The debt in 1.e for \$114 is for a past-due medical bill. Applicant admits this debt in his Answer. At hearing, Applicant claimed that he satisfied the debt about a year ago. He did not submit documentary proof of payment and the debt still appears on his recent credit report. (Tr. at 45-47; Gx. 4)

The debt in 1.f for \$9,609 is for a judgment from 2009 and is the deficiency owed for a car that was repossessed. Applicant admits this debt in his Answer and claims the amount he owes is less than that alleged, as a result of his pay being garnished to satisfy the debt. He provided proof that his pay was garnished from December 2010 to

January 2011, for about \$2,400. At hearing, he claimed that the debt was satisfied in 2011 through the garnishment of his wages. However, when previously confronted about this debt, he told an investigator the garnishment was stopped when he filed for bankruptcy. He did not submit documentary proof of payment and the debt still appears on his recent credit report. (Tr. at 47-49; Gx. 2 at 75; Gx. 4; Ax. A, H – I)

The debt in 1.g for \$8,132 is for a judgment from 2007. Applicant admits this debt in his Answer. He testified that he satisfied the debt in about 2009. However, when previously confronted about this debt, he told an investigator that he had included the unpaid judgment in his Chapter 13 bankruptcy plan. He did not submit documentary proof of payment and the debt still appears on his recent credit report. (Tr. at 49-53; Gx. 2 at 7; Gx. 4)

The tax lien for \$2,131 in 1.h was for a federal tax debt owed from 2002. The lien was satisfied, in part, through the involuntary seizure of Applicant's income tax refund. (Tr. at 53-56; Gx. 2 at 73, 75; Ax. B; Ax. D)

The debt in 1.i for \$7,359 is for a personal loan Applicant stopped paying in 2006. Applicant admits this debt in his Answer. At hearing, Applicant testified that he had several loans with the same creditor and claimed that the debt in 1.i was satisfied when the creditor canceled the debt. He provided a 1099-C showing that a debt for a different amount was canceled by the creditor in 2007. However, when previously confronted about this debt, he told an investigator that the creditor would not work with him on a reasonable payment plan and he had included the unpaid debt in his Chapter 13 bankruptcy plan. He did not submit documentary proof of payment and the debt still appears on his recent credit report. (Tr. at 50-51, 56-59; Gx. 2 at 74, 77; Gx. 4; Ax. G)

The debt in 1.j for \$1,033 is for a past-due cell phone bill related to Applicant's former janitorial business. Applicant admits this debt in his Answer. During his recent background interview, Applicant told the investigator that the debt went delinquent in 2006 and he took no action to resolve the debt until including it in his Chapter 13 bankruptcy plan. At hearing, Applicant claimed that he had resolved this debt during his last background investigation. He did not provide documentary proof that the debt was paid and it still appears on his recent credit report. (Tr. at 59-61; Gx. 4)

The debt in 1.k for \$1,372 is for a charged-off credit card account. Applicant admits this debt in his Answer, but claims he satisfied the debt through the involuntary garnishment of his wages. At hearing, Applicant was not certain of the debt's status, but promised to check and provide a status update. He did not submit documentary proof of payment and the debt still appears on his recent credit report. (Tr. at 61-62; Gx. 4)

The debt in 1.l for \$35 is for a returned check from 2002. Applicant admits this debt in his Answer, but claims it was "paid in full." At hearing, he again claimed the debt was paid. He did not submit documentary proof of payment and the debt still appears on his recent credit report. (Tr. at 62-63; Gx. 4)

Applicant has received financial counseling through the Chapter 13 bankruptcy process. He testified that he learned how to successfully dispute debts appearing on his credit report and how to improve his overall credit score, but did not take the courses offered on how to manage his finances. He does not have a savings account, but has several credit cards with a total balanced owed of over \$1,500. He has a second, part-time job to help pay his bills. He is currently repaying two hardship loans for approximately \$8,000, which he received from his employer-sponsored 401(k) retirement account. Although he has had several vehicles repossessed in the past and still has not paid the 2009 judgment for the deficiency owed for a repossessed car, he currently pays over \$1,000 a month for two luxury vehicles. His expected tax refund from the 2011 tax year was intercepted by the IRS to satisfy a past-due debt not referenced in the SOR.¹ As of the hearing, Applicant had not yet filed his 2012 federal and state tax returns. (Tr. at 29, 55, 63-79; Gx. 2 at 73-77; Ax. A - B)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial 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 establish their eligibility.

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. Furthermore, “[o]nce a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-16511 at 3 (App. Bd. Dec.

¹ The seizure of Applicant’s income tax refund to satisfy a past-due debt not alleged in the SOR, as well as other matters not alleged, but that bear on Applicant’s reliability, trustworthiness, and judgment, were only considered in assessing Applicant’s credibility, mitigation case, and whole-person factors. See generally ISCR Case No. 12-01038 at 3 (App. Bd. June 26, 2013)

4, 2009) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

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 amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines 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.

Applicant has a long history of not paying his financial obligations stretching back to at least 1990. He has twice filed for Chapter 13 bankruptcy in the past five years. Despite having the financial means to pay, he has failed to follow through with the debt repayment schedule set forth in his bankruptcy plans. He currently owes over \$28,000 in delinquent debt and provided no evidence that his financial situation is improving. Instead, Applicant continues to spend well beyond his means and refuses to satisfy the obligations he freely entered into in the past. This evidence squarely establishes the concern at issue and the following disqualifying conditions listed at AG ¶¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means . . .

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;
- (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.

None of the mitigating conditions apply. Applicant's delinquent debts are numerous, substantial, and ongoing. Applicant has continuously blamed issues outside of his control for his financial predicament, the latest being his 11 months of unemployment between 2006 and 2008. However, he has been employed full time for the past five years and the record is replete with evidence that his financial problems are related to his lavish spending habits and other potential security concerns. For instance, in 2009, he took a week-long trip to the Caribbean to play in a poker tournament, while, at the same time, failing to comply with the terms of his bankruptcy plan to repay his debts. Applicant does not receive credit for receiving financial counseling for it is clear that such counseling has had no impact. He also does not receive credit for resolving the 2002 tax debt and other past-due debts, because such were only satisfied after his overdue creditors were forced to turn to other avenues to make him pay. Overall, Applicant's finances continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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).² I specifically considered Applicant's excellent work history and 30 years of holding a security clearance. However, after weighing the disqualifying and mitigating conditions, and evaluating all the evidence in the context of the whole person, I conclude Applicant did not mitigate the security concerns at issue. His financial issues are significant and ongoing. Furthermore, I found his hearing testimony less than credible. Specifically, his testimony regarding the debts at issue was contradicted by the record evidence and what he previously told investigators during the course of his background investigation. I do not find that such inconsistencies were the result of faulty memory or poor bookkeeping. Instead, Applicant deliberately attempted to mislead in order to receive a favorable security clearance determination.³ Consequently, I am left with *substantial* doubts about his 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.l: 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

² 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.

³ See *infra* n. 1.