



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-01500
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
 Adrienne M. Strzelczyk, Esq., Department Counsel
 For Applicant: *Pro se*

06/19/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by a long track record of consistently spending beyond his means, which led to the accumulation of a substantial amount of delinquent debt. His delinquent debts total over \$170,000, of which \$90,000 is for past-due federal taxes. Notwithstanding the presence of some mitigation, Applicant failed to establish that his finances are under control and his financial situation continues to raise a security concern. Clearance is denied.

Procedural History

On June 9, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant’s conduct and circumstances raised security concerns under the financial considerations guideline.¹ On August 8, 2014, Applicant

¹ This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

answered the SOR and requested a hearing to establish his eligibility for access to classified information.

On January 15, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was originally scheduled for January 5, 2015, but was canceled due to inclement weather. By agreement of the parties, the hearing was rescheduled for and held on April 14, 2015. Department Counsel offered Government Exhibits (Gx.) 1 – 4. Applicant testified and offered Applicant's Exhibits (Ax.) A – C. He requested additional time post hearing to submit documentary evidence. I granted his request, and he timely submitted Ax. D, an e-mail dated May 4, 2015, with six attachments. The attachments were marked Ax. D(1) – D(6). All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on April 22, 2015, and the record closed on May 5, 2015.

Findings of Fact

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

Applicant is a systems engineer for a federal contractor. He was awarded a doctorate from a prestigious university in 1973. He is married and has three adult children. He is dedicated to his family, active in his community, and submitted numerous letters from colleagues, friends, and family members relaying their favorable impressions about his character. (Tr. at 26-30; Gx. 1; Ax. A)

Applicant traces his financial trouble back to 2004, when he voluntarily resigned from his position as president of Company A to seek private outside capital to purchase the company. He was unsuccessful, the company was sold to another group of investors, and he was unemployed from February 2004 to February 2006. During this period of unemployment, Applicant suffered from some medical issues. In 2006, he was hired as a senior vice president for Company B, but was laid off the following year. Applicant then started his own consulting firm and was self-employed until July 2011, when he was hired by his current employer. (Tr. at 35-Gx. 1)

After leaving Company A in 2004, Applicant started drawing from his retirement account to pay for his recurring monthly expenses, private health insurance, and his children's college education. Applicant states that his income decreased sharply after leaving Company A. Upon filing his federal income tax returns for tax years 2008 and 2009, Applicant realized that he was unable to pay the resulting tax obligations. He claims that around the same time his wife lost a major business client, who failed to pay a substantial bill that would have covered a sizeable portion of their tax liability.² His IRS account transcripts reveal that Applicant and his wife's adjusted gross income for 2008 was \$279,000, and for 2009 it was \$188,000.³

² Tr. at 35-38, 53-55; Gx. 2; Ax. A; Answer.

³ Ax. D(5); Ax. D(6).

In 2011, after the IRS had initiated enforcement action to recoup his past-due federal taxes, Applicant entered into an installment agreement. The agreement reflects that, as of January 2011, Applicant's federal tax debt for tax years 2008 and 2009 was \$94,000. Applicant paid per the terms of the initial installment agreement for five months for a total of \$5,000.⁴ He then entered into a second installment agreement with the IRS on June 30, 2014 – three weeks after the SOR was issued and a few days after the IRS had issued a “final notice before levy on social security benefits.”⁵ Applicant has been paying per the terms of the new installment agreement and, as of May 2015, the balance owed on his federal tax debt is a little over \$90,000.⁶

In August 2011, Applicant submitted a security clearance application (SCA) in connection with his current job. In response to relevant questions regarding his finances, Applicant listed his federal tax debt. He stated that he planned to resolve his tax debt by selling his home in State X.⁷ He did not list any other delinquent debts.

In August 2013, Applicant responded to a DOD CAF interrogatory that inquired as to what steps he had taken to resolve his federal tax debt and four charged-off credit card accounts totaling nearly \$58,000. He responded by stating that he expected the family home in State X to go on the market the following month (September 2013) and to sell quickly. He anticipated the sale of the property to generate net proceeds of over \$245,000, which he planned to use to resolve his delinquent debts.⁸

Applicant also submitted a personal financial statement (PFS) with his interrogatory response. The PFS reflects that, as of August 2013, Applicant and his wife's combined monthly net income was \$13,057, their monthly expenses and debts totaled \$16,510, leaving a monthly deficiency of over \$3,400. Applicant listed, as one of his monthly expenses, the \$1,300 rent that he was paying for his then 26-year-old daughter. He was not paying his delinquent federal tax debt at the time.⁹

In August 2014, Applicant submitted his Answer. He again promised to resolve his delinquent debts by selling the property in State X. He explained that he had taken the property off the market after it sustained water damage, but expected it to be placed on the market the following month (September 2014). Applicant again expressed his belief that the resulting net proceeds from the sale of the property would be more than sufficient to resolve his outstanding debts.¹⁰

⁴ Ax. A at 40-46; Ax. D(4).

⁵ Ax. D(5) at 2; Ax. D(6) at 2.

⁶ Ax. D(5) at 1; Ax. D(6) at 1.

⁷ Gx. 1 at 35.

⁸ Gx. 2 at 7-9, 29-31.

⁹ Gx. 2 at 5.

¹⁰ Answer at 5-7.

At hearing, in April 2015, Applicant elaborated further on the problems, primarily the water damage, that prevented the sale of the property in State X.¹¹ He, however, was confident that the property would be ready to go back on the market “within the next couple of weeks ... to show prospective buyers,”¹² and would generate a sufficient profit to resolve his delinquent debts.¹³ Applicant brought current the property taxes on the property in State X, as well as a \$474,000 line-of-credit that is secured by a second mortgage on the property (SOR 1.h and 1.i).¹⁴ He also satisfied a debt for a past-due credit card account after the creditor secured a judgment (SOR 1.d).¹⁵ However, as of the close of the record, the property in State X had still not been sold, a 2012 federal tax lien for over \$95,000 remains in place against the property (SOR 1.a), and five charged-off credit cards, totaling over \$80,000, remain unresolved (SOR 1.b, 1.c, 1.e, 1.f, and 1.g).¹⁶ Although Applicant did not submit a recent budget or PFS, he testified that his monthly take-home pay had risen to approximately \$15,000, but was “eaten up” in paying recurring monthly expenses and debts.¹⁷

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. E.O. 10865 § 2.

When evaluating an applicant’s eligibility 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. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense 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.

¹¹ Tr. at 40-43, 56-57; Ax. A at 68-73.

¹² Tr. at 42.

¹³ Tr. at 40-43.

¹⁴ Tr. at 33-34, 55-56, Ax. D(2); Ax. D(3).

¹⁵ Tr. at 32-33; Ax. A at 29.

¹⁶ Tr. at 32-33, 45-46.

¹⁷ Tr. at 46-48. Or, after taxes and deductions, Applicant’s annual take-home pay is \$180,000.

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. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) ("Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.").

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.¹⁸

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 regarding an individual who fails to pay their financial obligations and incurs delinquent debt is explained 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. . . .

The security "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."¹⁹ The concern also encompasses financial irresponsibility, which may

¹⁸ Security clearance determinations are "not an exact science, but rather predicative judgments about a person's security suitability." ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). See also ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014); ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013).

¹⁹ 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).

indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant took a professional risk in 2004 that proved unsuccessful. His income decreased while unemployed for two years and his subsequent employment reportedly did not pay him the remuneration he previously enjoyed. His financial issues were exacerbated by medical issues and his wife's purported loss of a major client. However, instead of scaling back his expenses to reflect his new financial reality, Applicant continued to amass debt. His delinquent debts currently stand at over \$170,000, of which \$90,000 is for past-due federal taxes for tax years 2008 and 2009. Even after gaining meaningful employment over four years ago, he continued to spend beyond his means and incurred further delinquent debt, as evidenced by his PFS that reflects a monthly deficiency of over \$3,400. The record evidence raises the financial considerations security concern and establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

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;

AG ¶ 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;

AG ¶ 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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are numerous, substantial, and ongoing.²⁰ He did not incur the debts under unusual circumstances. Instead, he made a conscious decision to spend beyond his means to keep the family home that he and his wife have owned since 1985 and to financially assist his children well after they had reached the age of adulthood.²¹ Although Applicant's efforts to provide for his family are laudable, they came at the expense of his financial obligations, to include the obligation of all citizens to pay their taxes. He disregarded his past-due taxes until the IRS initiated enforcement action, and he has yet to contact his overdue creditors regarding over \$80,000 of past-due credit card debt. He has not received financial counseling, nor reformed the spending habits that led to his current financial situation.²² AG ¶¶ 20(a) and 20(c) do not apply.

Applicant's voluntary decision to leave Company A, which then resulted in a lengthy period of unemployment, was not a matter beyond his control – though the long layoff is not something he could have reasonably anticipated. Additionally, his medical issues and his wife's loss of income were matters beyond his control. However, Applicant failed to demonstrate that he responsibly managed his finances and addressed his past-due debts under the circumstances. He secured a well-paying job four years ago, and despite a reported net monthly income of \$15,000, over \$170,000 in delinquent debt remains unresolved. Of note, the installment agreements Applicant entered into with the IRS to resolve his sizeable tax liability occurred after the IRS initiated enforcement action. Applicant paid for five months on the initial installment agreement, and he then entered into a second installment agreement only after the IRS threatened to levy his social security wages. As of the close of the record, Applicant's outstanding tax liability for the 2008 and 2009 tax years remains at over \$90,000.

Furthermore, other than the debts related to the property in State X, the only non-tax related debt Applicant addressed is one where the creditor secured a judgment. An individual who addresses a past-due debt only after the creditor takes action to require repayment of the debt does not exhibit the requisite level of responsible conduct in managing their finances and good-faith adherence to their financial obligations that is expected of those granted access to classified information. Under the circumstances, Applicant has not demonstrated that he responsibly manages his finances nor that he in good faith initiated efforts to repay his overdue creditors. Moreover, his recurring promise over the course of the past four years to resolve his delinquent debts through

²⁰ ISCR Case No. 11-13507 at 2 (App. Bd. Oct. 29, 2013) ("unpaid delinquent debts constitute a continuing course of conduct").

²¹ Of note, Applicant's monthly payment for his daughter's rent was more than the monthly installment amount required under the initial IRS installment agreement. *Compare*, Initial Installment Agreement, Ax. D(4) (\$1,000 per month for 12 months, rising to \$2,800 per month), *with*, PFS, Gx. 2 at 5 (paying \$1,300 a month for daughter's rent; and daughter's rent and his monthly car expenses exceed \$2,800 a month).

²² Applicant continued to amass delinquent debt after he was made aware of the Government's concerns about his finances. His delinquent credit card debt, as reflected on the DOD CAF interrogatory, was nearly \$60,000. Less than a year later, when the SOR was issued, the debt had climbed to over \$80,000.

the sale of the property in State X is insufficient to meet his burden of persuasion.²³ AG ¶¶ 20(b) and 20(d) do not 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).²⁴ I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's favorable character references and the dedication that he has exhibited to his family over the years. Additionally, he is starting to make inroads into resolving the substantial amount of delinquent debt that he amassed over the past decade. He has been paying per the terms of his current installment agreement with the IRS, brought current the second mortgage and property taxes on his former home, and satisfied a judgment. An individual is not required to be debt free, or required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, an individual seeking access to classified information must establish that they manage their personal finances in a manner expected of those granted access to this nation's secrets. Notwithstanding the presence of some favorable evidence, Applicant failed to meet his burden of persuasion.²⁵ He has yet to take control of his finances; his past-due debts are numerous, substantial, and ongoing; and security concerns regarding his current finances and the circumstances that led to his accumulation of a substantial amount of delinquent debt remain unmitigated. Overall, the record evidence leaves me with doubts and questions about Applicant's 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.c, and 1.e – 1.g:	Against Applicant
Subparagraphs 1.d, 1.h, and 1.i:	For Applicant

²³ ISCR Case No. 14-00714 at 3 (App. Bd. May 27, 2015) ("Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner.") (citing, ISCR Case No. 11-04176 at 2-3 (App. Bd. Dec. 17, 2012)).

²⁴ 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 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.

²⁵ ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (Favorable record evidence regarding an individual's character, honesty, and reliability "may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").

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