



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-03968
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his financial problems. He accumulated over \$35,000 in delinquent debt that remains unresolved. Clearance is denied.

Statement of the Case

On September 13, 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). Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

On October 22, 2013, I was assigned Applicant's case and after coordinating with the parties, scheduled the hearing for November 14, 2013. At hearing, Government Exhibits (Gx.) 1 – 5 were admitted into evidence without objection.¹ Applicant testified

¹ Department Counsel prepared an index of exhibits, which was marked Hearing Exhibit (Hx.) I. The SOR was amended, without objection, to correct the case number. (Tr. at 14-19)

and offered Applicant's Exhibits (Ax.) A – D, which were admitted without objection. I granted Applicant's request to keep the record open to allow him the opportunity to submit additional matters, including documentary proof that he satisfied or disputed some of the debts listed in the SOR.² He did not submit any matters post-hearing. The hearing transcript (Tr.) was received on November 21, 2013, and the record closed on December 5, 2013.

Findings of Fact

Applicant, 29, works for the U.S. military as a federal contractor. He served in the U.S. Navy from 2002 to 2006, at which time he was honorably discharged. He then worked for a private security contractor for about a year. He was working full time and earning a good salary until his former employer lost a significant contract. Applicant's hours were sharply reduced and, by the summer of 2007, he was unemployed. It took him about a year to find another job, but his pay was less than half of what he had been earning at his former job. In February 2011, Applicant was hired by his current employer and submitted a security clearance application in connection with his job. His employer writes that he is an "outstanding employee." (Tr. at 25-26, 38-44; Gx. 1 – 2; Ax. C)

Applicant's SOR lists 12 delinquent debts, totaling over \$35,000. His delinquent debts range from a \$61 medical account to a \$19,000 debt for a repossessed car. In his Answer, Applicant admits six of the debts, totaling over \$32,000.³ The Government established the other six debts through credit reports and public court records. (Gx. 3-5)

Applicant claims his financial problems started in 2007, when his pay was reduced and he was then unemployed for a year. He further claims that he has started to put his financial house in order. He recently started receiving a \$1,400 monthly stipend through the G.I. Bill, which he uses to pay his rent. He testified that this new stream of income allows him to set aside enough money to pay his past-due debts. He promised to resolve a \$7,500 debt, listed at SOR ¶ 1.b, by using a portion of the funds from a 401k loan that he secured a week before the hearing. He also promised to submit documentation post-hearing to substantiate his claims of debt repayment, to validate his disputes of certain debts, and to provide proof of having received financial counseling. (Tr. at 25-34, 44-63; Gx. 2)

Applicant did not submit any documents post-hearing to substantiate any of his claims. He previously promised during his 2011 security clearance background interview that he would resolve the \$7,500 debt by 2012.⁴ Furthermore, he moved into a

² Tr. at 29-32, 54-56, 67-70, 76-80. Applicant was granted three weeks after the hearing to submit matters, and was advised that if he needed more time that he could request such in writing. He did not submit any matters post-hearing, nor requested additional time.

³ Specifically, SOR ¶¶ 1.a-b, e, and h-j.

⁴ Gx. 2, *Subject Interview*.

more expensive apartment after he started receiving the \$1,400 stipend.⁵ His past-due debts totaling over \$35,000 remain unresolved as of the close of the record.

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 531.⁶

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

⁵ *Contrast*, Gx. 2, *Personal Financial Statement* (lists \$600 a month for rent), *with*, Tr. at 44-47 (as of September 2011, when started receiving stipend, paying over \$1,200 a month for rent).

⁶ *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.”) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.⁷

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 potential security concern regarding an applicant with financial problems 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s accumulation of over \$35,000 in delinquent debt raises this concern. This record evidence 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.”

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;

⁷ See ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments). See also, *Kaplan v. Conyers, et al.*, 2013 U.S. App. LEXIS 17278 at ** 23-24, 40-51 (Fed. Cir. Aug. 20, 2013) (federal courts will generally defer to such predictive judgments).

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;

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

AG ¶ 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.

None of the mitigating conditions apply. Although Applicant's current financial trouble is in part due to matters beyond his control, namely, unemployment and underemployment, he has not handled his financial affairs in a responsible manner. He has been with his current employer for nearly three years and submitted no documentation that he has resolved any of his past-due debts. An applicant bears the burden of mitigating the security concerns at issue and to establish his or her eligibility for a security clearance. Applicant's failure to submit documentary proof of his efforts to resolve his past-due debts severely undercuts his position for a clearance, especially in light of his previous promise to resolve one of the SOR debts that remains unresolved. Furthermore, Applicant's recent decision to increase his monthly expenses by moving into a more expensive apartment instead of using his new stream of income to resolve his long overdue debts casts doubt on his claims of financial reform. In the end, I find that Applicant's financial situation is not under control and he failed to meet his burden to mitigate the security concerns arising from his finances.

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).⁸ I specifically considered Applicant's military service, his employer's recommendation, and that he previously held a security clearance while in the military. However, his accumulation of a significant amount of delinquent debt, which remains unresolved as of the close of the record, raises doubts about his eligibility for a security clearance.⁹

⁸ 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.

⁹ ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) (“[e]ven years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt.”).

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

Francisco Mendez
Administrative Judge