



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-09594
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/12/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his accumulation of a substantial amount of delinquent debt and failure to file his tax returns. Notwithstanding the presence of some favorable information, Applicant failed to meet his burden of persuasion for access to classified information. Clearance is denied.

History of the Case

On February 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

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 (AG) implemented by the Department of Defense on September 1, 2006.

On March 16, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling Applicant's hearing for April 26, 2016.² The hearing was convened as scheduled. Department Counsel offered Government exhibits (Gx.) 1 – 5. Applicant testified and offered Applicant's exhibits (Ax.) A – E. Both sides' exhibits were admitted without objection.³ At Applicant's request, I kept the record open post-hearing to provide him the opportunity to submit additional evidence. He did not submit evidence post-hearing.⁴ The hearing transcript (Tr.) was received by DOHA on May 5, 2016, and the record closed on May 13, 2016.

Findings of Fact

Applicant, 39, graduated from college with a business management degree in 2006. He was able to secure employment with a financial institution for a short period of time, but was primarily unemployed or underemployed from approximately 2007 to June 2011. He decided to change careers to improve his marketability and started taking computer-related courses. (Tr. 27-28; Gx. 1 - 2)

Applicant has been with his current employer since June 2011. He is employed as a network administrator. He earned a starting annual salary of \$90,000 and, as of the hearing, his yearly salary had increased to \$120,000. He is engaged and his fiancée contributes to their household expenses. Applicant estimates that, after paying expenses and debts, he has about \$3,000 a month in disposable income. (Tr. 33-35)

Applicant incurred a significant amount of delinquent debt during the four-year period of time that he was unemployed and underemployed. He became overwhelmed with the amount of debt and pushed it aside. Applicant claims that after getting his current job and recognizing the need to attain a security clearance for the job, he began the process of addressing his financial situation. (Tr. 28)

In March 2012, in connection with his employment as a federal contractor, Applicant submitted a security clearance application (SCA). In response to questions regarding his financial record, Applicant disclosed a number of delinquent debts, including the student loan debts referenced in SOR 1.a and 1.b. He stated on the SCA that he was working with a credit counselor to consolidate his outstanding student loans and "bring them back to current status." (Gx. 1 at 40) He took no documented action to remedy his student loan delinquency in the four years that elapsed between submitting his SCA and his security clearance hearing. Instead, at hearing, Applicant claimed that he was working with a new credit counselor to resolve his debts, including his

² Prehearing scheduling correspondence, the notice of hearing, and case management order are attached to the record as Hearing Exhibits (Hx.) I – III, respectively.

³ Department Counsel sent Applicant the exhibits she offered at hearing in December 2015. (Gx. 5). Applicant confirmed he received the Government's exhibits in advance of the hearing. (Tr. 9-13, 22-23)

⁴ Inquiry to the parties regarding whether Applicant submitted post-hearing matters and Department Counsel's response noting that she did not receive any from Applicant are attached to the record as Hx. IV. See also Tr. 60-62 (deadline for submitting post-hearing matters established).

delinquent student loans. (Tr. 45-47) Applicant claimed that he contacted the creditor servicing his student loans and was offered a payment plan of \$600-\$700 a month, but that it “wasn’t a feasible payment plan.” (Tr. 40) Applicant’s delinquent student loans, which total over \$50,000, remain unaddressed.

The other delinquent debts referenced at SOR 1.c – 1.s were listed by Applicant on his SCA or uncovered during the course of the subsequent background investigation. (Gx. 1 – 4) In April 2012, during his background interview, Applicant stated that he planned to meet with a credit counselor, investigate the derogatory accounts appearing on his credit report, and address those delinquent debts he owed. (Gx. 2 at 7) At hearing, Applicant admitted, in response to questions by Department Counsel, that he took no action to address his delinquent debts until the SOR was issued. (Tr. 59)

Applicant also claimed at hearing, as he had in his sworn Answer, that he had paid a number of the smaller debts listed on the SOR. The record was kept open for two weeks to provide him the opportunity to provide documentation to corroborate his claims. He did not submit any matters post-hearing. (Tr. 48-56, 60-62)

Applicant did not file his 2009 federal and state tax returns. He stated on his SCA that he had hired a nationally well-known tax preparation firm to file his overdue returns. (Gx. 1 at 32-33)⁵ During his subsequent background interview, Applicant discussed his overdue 2009 tax returns and told the investigator that he planned to file the 2009 returns in April 2012. (Gx. 2 at 1) Four years later, at his security clearance hearing, in response to Department Counsel’s questions, Applicant admitted he had not yet filed his 2009 tax returns. He did not have a “good answer” for why he had not taken action to address his tax situation. (Tr. at 56-57)

Applicant claims that he has been unable to resolve his delinquent debts because he is uncertain as to the accuracy of the adverse information reflected on his credit reports. He provided documentation reflecting that his personal information was potentially compromised. (Ax. B) He hired credit counselors to assist him in verifying the derogatory accounts listed on his credit reports. For instance, after the SOR was issued, Applicant filed a dispute regarding the \$7,500 collection account for past-due rent referenced in SOR 1.c. After receiving a response from the credit bureaus verifying the debt, Applicant took no action to address the debt. (Tr. 47-48) He provided no additional documentation to substantiate his dispute regarding the specific debts listed in the SOR.

Applicant’s evaluation reports reflect good work performance. He is highly regarded by his references for his professionalism and trustworthiness. (Ax. D and E)

⁵ See also February 24, 2015 sworn Answer, wherein Applicant states he is working with the same tax preparation firm to file his 2009 tax returns and promises to do so by the hearing. As noted, as of the hearing, which was held over a year later, Applicant had not filed his 2009 tax returns.

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 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.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). 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, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “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.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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.

The financial considerations security concern is not limited to a consideration of whether an individual with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an individual's delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.⁶

Applicant's accumulation of a significant amount of delinquent debt and failure to file his 2009 income tax returns raise the financial considerations security concern. This record evidence also 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(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

The guideline lists a number of conditions that could mitigate the financial considerations security concern. I considered all the mitigating conditions, including the following:

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;

⁶ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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 which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue

None of the mitigating conditions apply. Applicant's current financial problems are, in part, related to long-term unemployment and underemployment. However, despite full-time employment since June 2011, Applicant has not taken responsible action to address his delinquent debts and tax situation. Instead, time and again, over the course of the security clearance process, Applicant has made hollow promises to address his debts and overdue tax returns. Regarding his past-due debts, Applicant's action has been limited to hiring credit verification firms to contest the derogatory accounts listed on his credit report and, if the credit agencies verify the debt, he takes no further action to address the debt beyond filing another dispute.⁷ As of the close of the record, the 18 SOR debts, which total about \$65,000 and include numerous debts of less than \$500 each, remain unaddressed. As for the overdue tax returns, notwithstanding repeated promises to file the returns, Applicant has yet to file them. In short, the record strongly suggests that Applicant is attempting to evade his financial obligations, raising concerns he may treat his security obligations in a similar fashion.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.⁸ Applicant failed to meet his burden of proof. Financial considerations security concerns remain.

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

⁷ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

⁸ It is generally well recognized that it make take an individual years to clean up incorrect information appearing on their credit report due to identity theft. However, in this case, the record evidence does not support a finding that Applicant's financial situation is related to identity theft. Instead, the record reflects an individual who has disregarded his financial obligations for years despite the financial means to address them.

conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a). I have considered all the record evidence, including Applicant's good work performance and favorable character references. Notwithstanding this and other favorable record evidence, Applicant failed to meet his burden of proof for access to classified information. Notwithstanding full-time employment since June 2011 and reported \$3,000 a month in disposable income, he has yet to take action to address his delinquent debts and overdue tax filings. He was first made aware that these matters raised a security concern over four years ago. Overall, the record evidence leaves me with doubts about his present suitability and eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
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Subparagraphs 1.a – 1.t:	Against Applicant
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Conclusion

In light of the circumstances presented by the record in this case, 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