



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-01544
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. Clearance is denied.

Statement of the Case

On October 27, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.¹ Applicant answered the SOR and initially requested a decision on the written record. He subsequently requested a hearing to establish his continued eligibility for a security clearance.²

On January 12, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified at the hearing and the exhibits offered by the parties at hearing and post-hearing were admitted into the administrative record without objection.

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.

² Applicant's request for a hearing is attached to the record as Appellate Exhibit (App. Exh.) I.

(Government Exhibits 1 – 4 and Applicant's Exhibits A – Q.)³ The transcript (Tr.) was received on January 17, 2017, and the record closed on January 27, 2017.

Findings of Fact

Applicant is married. He and his wife have five children, but are empty nesters. He served in the U.S. military from 1977 to 1981, and received an honorable discharge. He has worked as a contractor for the federal government and held a security clearance for over 30 years. His security training is up-to-date. He submitted favorable character references from his company's human resources director and facility security officer. (Tr. 28-30, 50-53; Exhibits F, I)

The SOR lists five delinquent debts totaling about \$22,000. Applicant addressed the debts referenced in SOR 1.a and 1.e. He fell behind on the credit card debts referenced in SOR 1.b – 1.d in approximately 2005. Shortly after the SOR was issued, Applicant met with a financial counselor who advised him not to contact the creditor holding the now charged-off credit card debts because they had fallen off his credit reports and were uncollectible as the state statute of limitations had run. Applicant was further advised by the financial counselor that if he did contact the creditor and made arrangements to pay the credit card debts, such action would negatively impact his credit. These charged-off credit card debts total about \$20,000 and remain unresolved.

Applicant explained that his financial problems started around 2000, when he and his former wife separated. She moved out of state with their daughter and they divorced in 2002. The divorce was costly and his expenses further increased due to the travel cost associated with visiting his daughter out of state. He started relying on credit cards.

Applicant missed a payment on one of the cards in 2004 or 2005, which drove up the interest rates on his accounts. He was unable to make the minimum payments on the three credit card accounts referenced in SOR 1.b – 1.d, and stopped paying on the accounts. He was offered a settlement of approximately \$12,000 to resolve the \$20,000 in credit card debt. He testified that he could have paid the settlement by taking out a loan from his 401(k) retirement account, which has a balance of approximately \$200,000; but elected not to. He has taken out several 401(k) loans over the years to fix his house or pay-off debt. He did not have an outstanding 401(k) loan as of the hearing. He has experienced health problems over the past few years that have negatively impacted his current financial situation. (Tr. 33-47, 52-53; Exhibit Q)

Applicant resolved other debts not listed on the SOR in 2012. He did so shortly before submitting his recent security clearance application. Specifically, he resolved a \$5,000 credit card and a \$1,200 judgment. The judgment was resolved through wage garnishment. Applicant disclosed these two resolved debts on his clearance application, but did not list the \$20,000 in past-due credit card debt. (Tr. 39-46, 53-56; Exhibit 1; Exhibit L; Exhibit J)

³ Prehearing correspondence, notice of hearing, and case management order were marked and are attached to the record as App. Exh. II – IV.

Applicant earns an annual income of about \$64,000 as a federal contractor. Together, Applicant and his wife earn approximately \$90,000 annually. He owns a home and has made extra monthly payments towards paying down the mortgage. As of the hearing, the mortgage balance on his home was down to \$4,000. Applicant testified that his home is worth approximately \$85,000. His recent credit reports reflect a favorable credit score (high 700s to low 800s). (Tr. 51-52; Exhibits G, M-Q)

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

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.

As stated in the relevant portion of AG ¶ 18 quoted above, the security concern at issue is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt cast doubt upon a person's judgment, self-control, and other qualities essential to protecting classified information.⁴

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

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

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

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;

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

⁴ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant incurred the delinquent credit card debts in 2005. Although the costly divorce from his ex-wife and the added expense to visit his daughter out of state were matters largely beyond his control that negatively impacted his financial situation, he had the means to resolve the debts and decided not to. Instead, he walked away from the debt and waited for the statute of limitations, as well as the time period the credit agencies could lawfully report the debt, to run. He used the financial windfall from not paying the credit card debts to improve the balance in his retirement savings account and reduce the balance on his mortgage. Thus, notwithstanding Applicant's claims to the contrary, the evidence shows that he had the financial means to pay his debts and chose not to. He improved his financial situation at the expense of paying his lawful obligations. His actions towards the financial obligations represented by the credit card debts raise continuing concerns that he would treat his security obligations in a similar manner.⁵

The preceding is not intended to suggest or imply that a person seeking to attain or maintain a security clearance is required to take out a loan or withdraw money from their 401(k) retirement account to pay a debt. Such action would be financially imprudent and short sighted. Here, however, Applicant had the financial means to pay his credit card debts referenced in SOR 1.b – 1.d without tapping into his 401(k) account, as evidenced by his ability to make extra monthly payments to bring down the balance on his mortgage. He chose not to use his disposable income to pay his credit card debt and instead used it to improve his financial position. A person who places their personal goals over their financial obligations does not demonstrate the reliability, trustworthiness, and good judgment required of those granted the privilege of holding a security clearance.⁶

Also, Applicant's failure to list his delinquent credit card debt on his recent SCA and instead only disclose the two debts he had resolved, further detracts from the favorable record evidence, including the apparent healthy state of his finances at present.⁷ I have considered the somewhat recent financial advice Applicant received about not contacting the new creditor holding the \$20,000 in uncollectible credit card debt. However, I have given this information less weight in resolving the security concerns at issue because of the circumstances leading to the debts uncollectible status.

⁵ *Contrast with* ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017), where an applicant who experienced similar matters beyond his control accrued a large amount of delinquent debt, but who took responsible action to address the debt. The Board cited to this favorable evidence of responsible conduct, coupled with the debts unenforceability, in remanding the unfavorable decision.

⁶ *See generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) ("A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

⁷ Applicant's failure to report this information on his clearance application was not alleged in the SOR. Thus, it was not considered for disqualification purposes, but was considered in assessing his mitigation case, credibility, and whole-person factors.

An applicant's reliance on the unenforceability of a debt due to the running of a state statute of limitations or the debt falling off a credit report is misplaced, because the security concerns raised by delinquent debt are not necessarily mitigated by the debt's unenforceability. Instead, a judge must examine the circumstances that led an applicant to default on the debt, an applicant's efforts to address the debt, and evidence, if any, of reform. Here, the circumstances leading to the unenforceability of the \$20,000 in credit card debt and lack of significant evidence of reform raise doubt about Applicant's continued suitability for a clearance.⁸

Accordingly, for all the foregoing reasons, I find that the disqualifying conditions listed at AG ¶ 19(a) and 19(c) apply. 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 whole-person factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant has held a security clearance for over 30 years without apparent issue. He served honorably in the military and then continued to serve the Government as a contractor. He submitted favorable recommendations. Nonetheless, this favorable evidence does not fully mitigate the security concerns raised by the evidence. Notably, Applicant walked away from his financial obligations (the credit card debts) and then failed to report this information as required on his security clearance application. Overall, Applicant failed to meet his burden of proof and persuasion to continue his eligibility for a security clearance.

⁸ See *generally* ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) (internal citations omitted):

In this case, the Judge noted that Applicant explained that he did not owe any of the alleged debts because they had either been deleted from his credit report or soon would be deleted, and he also relied on a state statute of limitations to absolve himself of debts. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. We also have held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value.

See *also* ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017) ("the absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate an overall history of financial difficulties or constitute evidence of financial reform or rehabilitation."); ISCR Case No. 15-02957 at 3 (App. Bd. Oct. 14, 2016) (in rejecting an applicant's argument that the unenforceability of a debt due to running of statute of limitations resolved security concerns, the Board held: "even if a delinquent debt is legally unenforceable under state law, has been discharged in a bankruptcy, or is paid, the Federal Government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.")

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

Subparagraphs 1.a & 1.e:

For Applicant

Subparagraphs 1.b – 1.d:

Against Applicant

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

Francisco Mendez
Administrative Judge