



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



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| In the matter of: |) | |
| |) | |
| REDACTED |) | ISCR Case No. 15-01834 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

05/04/2017

Decision

MENDEZ, Francisco, Administrative Judge:

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

Statement of the Case

On December 13, 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 (Answer), waived his right to a hearing, and requested a determination on the administrative (written) record.

On March 28, 2016, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. With the FORM, Department Counsel forwarded to Applicant eight exhibits that the Government offers for admission into the administrative

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.

record, including Exhibit 8, a summary of Applicant's security clearance interview. These exhibits are admitted into evidence without objection.²

On April 28, 2016, Applicant submitted a one-page letter responding to the FORM (Response). He provided no documentary evidence to corroborate or substantiate his efforts to address the debts alleged in the SOR or basis to dispute their legitimacy. He also provided no documentary evidence regarding the current state of his finances or addressing the whole-person factors in AG ¶ 2(a).

On February 13, 2017, I was assigned the case. After confirming Applicant's continuing sponsorship for a clearance and recognizing the considerable amount of time and expense already expended on processing his case, I reopened the record to provide him a further opportunity to submit documentary evidence.³ He timely submitted Applicant's Exhibits A – J, which were admitted into the administrative record without objection. The record closed on March 7, 2017.

Findings of Fact

Applicant, 45, is married with two children. He served in the U.S. military from 1991 to 1993, and then again from 2002 to 2005. He received an honorable discharge. He earned an associate's degree in 2000. He was granted a security clearance in 2003 in connection with a previous position as a federal contractor. He has been working for his current employer since about 2007.⁴

Applicant's financial problems date back to at least 2011, when his former home was foreclosed. He had purchased the home in 2004 and financed the purchase price of approximately \$550,000 through a primary mortgage loan. He took out a second mortgage loan for \$60,000 in 2006. Both loans were interest-only, adjustable rate mortgages. When the interest rates reset, Applicant was unable to pay the higher monthly mortgage payments.

Applicant's poor financial situation was also negatively impacted by his wife having to take a lower-paying job to care for her ill parents, including her father who passed away in 2012. Also, the collapse of the housing market left him and his wife unable to sell their former home to satisfy the mortgage loans.⁵

² Applicant was advised in the FORM that he could object to the admission of the unauthenticated summary of his clearance interview and could comment upon any inaccurate information contained in the summary. In his Response and subsequent submissions, Applicant did not raise an objection to the summary nor noted any issues with the accuracy of the information contained in the summary. In light of Applicant's silence on the matter, I find that he waived any objection to the summary's admission and the document is otherwise admissible as no issues as to its accuracy and reliability are apparent from the record. ISCR Case No. 15-01807 (App. Bd. Apr. 19, 2017).

³ Administrative documents, including confirmation of Applicant's continuing sponsorship for a clearance, were collectively marked Appellate Exhibit I.

⁴ Exhibits 4, 8; Exhibit B.

⁵ Answer; Response; Exhibit 8; Exhibit D.

Applicant attempted to address his delinquent mortgages by applying for loan modifications and, failing that, unsuccessfully tried to short sale his home. In 2008, he submitted a financial hardship letter to his lender as part of the modification process. The letter reflects that, at the time, Applicant and his wife's combined monthly net income was approximately \$6,500. He claimed that they were unable to afford their \$2,000 monthly mortgage payments and pay their other debts, including about \$30,000 in credit card debt. He stopped paying his credit cards at about this time. As early as 2008, Applicant was considering filing for Chapter 7 bankruptcy to resolve the consumer debt he had accumulated up to that point.⁶

In 2012, Applicant submitted a security clearance application as part of a periodic clearance reinvestigation. He reported the adverse financial information regarding the mortgage loan and the foreclosure of his home. He indicated that he was going to file for bankruptcy to address his financial situation. In 2013 and then again in 2015, he looked into filing for Chapter 7 bankruptcy. He was purportedly advised that his debt-to-income ratio was too low to file and have his debts discharged through Chapter 7.⁷

Applicant received financial counseling in connection with the contemplated 2013 bankruptcy filing. An August 2015 document, which he prepared in anticipation of filing for bankruptcy, reflects that he had approximately \$90,000 in delinquent debt. Of which, about \$25,000 was for credit cards that he stopped paying at least four years earlier. This document also reflects that Applicant had an outstanding 401(k) loan.⁸

Applicant submitted a written household budget, which notes that he and his wife's monthly income is approximately \$6,250. This budget also reflects that in March 2017, after paying expenses, including a recurring \$3,600 monthly mortgage payment, Applicant had "left over" a negative (-) \$338.⁹

Recent credit reports submitted by Applicant from February 2016 and 2017 reflect numerous delinquent accounts. The SOR lists the two mortgage-related debts associated with his former home and seven other consumer-related debts, which together total about \$80,000. These debts are listed on the credit reports admitted into the record. Applicant presented no evidence that he paid or otherwise addressed any of the SOR debts. In his Answer, Applicant stated the following regarding the SOR debts and his overall financial situation:

This is how I look at it, the banks got a bail out so why shouldn't my family get a bail out. . . . Yes, I feel bad not being able to financially complete my obligation to the lenders but at the same time I don't feel guilty that it worked out at the end. I feel relieved that somehow my credit score

⁶ Exhibit D.

⁷ Exhibit 4; Answer; Exhibits F, G, H. No information was provided regarding Applicant's efforts, if any, to resolve his financial situation through Chapter 13.

⁸ Exhibits F, G.

⁹ Exhibit J.

somehow is getting better after so many years. I think the only mistake that I did was I didn't file for bankruptcy immediately after the foreclosure.¹⁰

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 ¶ E3.1.15.¹¹

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

¹⁰ Exhibit 2. Applicant states that he and his wife recently qualified for a mortgage and purchased a new home. (Exhibit A)

¹¹ See *also* ISCR Case No. 15-01208 at 4 (App. Bd. Aug. 26, 2016); ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011).

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.¹²

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 ¶ 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;

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;

¹² 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; and

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

Applicant's financial situation was, in part, the result of matters beyond his control. However, his financial problems, which led to the foreclosure of his former home in 2011 and failure over the past six years to address his debts, were primarily due to his own personal choices. In 2006, he took on about \$600,000 in mortgage-related debt that he could not afford. Two years later, he defaulted on these loans and stopped paying his other debts, including a sizeable amount of credit card debt. He attempted for some time to responsibly address his mortgage-related debt by seeking loan modifications and short sales, but for the past six years his efforts at debt resolution appear to have stopped once he was told he was ineligible to have his debts discharged through Chapter 7 bankruptcy.

Additionally, Applicant failed to show that his current financial situation is under control. Instead, the evidence Applicant submitted, notably, his household budget and recent credit reports, reflect that he continues to mismanage his personal finances and incur delinquent debt. Accordingly, I find that AG ¶¶ 19(a), 19(c), and 19(e) apply and that the mitigating conditions listed above have some limited applicability, but are insufficient, even when considered with the other favorable record evidence, to mitigate the security concerns at issue.

Individuals applying for a security clearance are not required to be debt free. They are also not 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.¹³ Applicant failed to meet his burden.

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 many years and honorably served in the U.S. military. His financial situation was, in part, the result of matters beyond his control, including the recession and his in-laws poor health. However, the major contributing factor was his own decision to become financially overextended and then

¹³ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

disregard his debts. He has yet to take the necessary responsible steps to put his financial house in order despite being aware for some time that his delinquent debts placed his security clearance eligibility (and possible continued employment as a federal contractor) in jeopardy. Applicant may in the future be able to re-establish his security clearance eligibility by showing that he responsibly addressed his delinquent debts and manages his personal finances in the manner expected of all clearance holders. At present, however, the questions and doubts about his eligibility, which were raised by his financial situation, remain.

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

Francisco Mendez
Administrative Judge