



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-02835
)	
Applicant for Security Clearance)	

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

11/09/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his delinquent debts. He failed to show that he has taken sufficient steps to address his past-due debts and mitigate security concerns raised by his financial situation. Clearance is denied.

Statement of the Case

On November 19, 2015, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.¹ On January 5, 2016, Applicant answered the SOR and requested a decision based on the administrative (written) record.

On February 10, 2016, Department Counsel prepared the Government's written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings, Applicant's security clearance application (SCA), credit reports, a

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.

bankruptcy court dismissal order, and the summary of Applicant's security clearance background interview. This documentary evidence was identified by the Government as Exhibits 1 – 6 and, without objection, are admitted into the administrative record.

On February 17, 2016, Applicant received the FORM. He was advised that he could submit matters in response to the FORM and in support of his case within 30 days of his receipt of the FORM. He did not submit a response or any other matters and, on September 9, 2016, the case was forwarded to the hearing office for assignment to an administrative judge. On November 1, 2016, I received the case assignment, with Applicant's request for a decision on the written record.²

Findings of Fact

Applicant is in his late thirties. He is married with three children. He earned his GED in 2000 or 2001. He has been with his current employer, a defense contractor, since 2014.

In September 2014, Applicant submitted a security clearance application (SCA) in connection with his current job. He disclosed three delinquent debts totaling approximately \$4,500. He noted that he was considering debt consolidation or bankruptcy to resolve the delinquent debts.

The subsequent background investigation uncovered that Applicant's delinquent debts were far greater than he listed on the SCA. The SOR lists 14 debts. Applicant admits 11 of the debts totaling over \$65,000. The remaining three debts are substantiated by the credit reports admitted in evidence. Applicant presented no evidence that he paid, settled, or otherwise resolved (or was in the process of resolving) any of the 11 SOR debts. He presented no information regarding whether he sought or received financial counseling, or how he plans to resolve his delinquent debts.

Applicant's financial problems began around 2007, when he decided to switch careers and become a real estate agent. Shortly thereafter, the housing market collapsed. About two years later, Applicant's wife lost her job. Applicant stopped paying on some of his credit cards in 2009. He was unemployed from March through June 2013. Applicant listed three of his delinquent credit card accounts on his 2014 SCA, and those debts remain unresolved.

Applicant's financial problems resulted in the loss of two investment properties. In April 2013, Applicant filed for Chapter 7 bankruptcy to stop his lender from foreclosing on one of the properties. After the lender agreed to a short sale, Applicant decided not to follow through with the bankruptcy and the bankruptcy case was dismissed. The other investment property was also disposed of through a short sale. He claims that any delinquent mortgage loans associated with those properties were resolved through agreed-upon short sales.

² Applicant's acknowledgment of receipt of the FORM and administrative documents reflecting that he was still being sponsored for a clearance were marked Appellate Exhibits I and II, respectively.

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 record evidence reflects that Applicant has a history of not meeting his financial obligations and, at a minimum, is unable to pay his debts. This record evidence raises the financial considerations security concern and establishes the disqualifying conditions at AG ¶¶ 19(a) and 19(c).

Applicant bears the burden of mitigating the security concerns raised by the evidence. The financial considerations guideline lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

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

Applicant's current financial situation appears to be rooted (with the benefit of hindsight) in his ill-timed decision to enter the real estate business. His poor financial situation was exacerbated by his wife's loss of employment in 2009 and a short period of unemployment in 2013. However, he has been gainfully employed since April 2014. He has been aware that his financial situation raises a security concern for at least a year, but failed to provide any evidence of what steps, if any, he has taken to address the substantial amount of past-due debt that he accumulated over the past seven years. He also did not provide any evidence indicating the receipt of financial counseling or from which a favorable inference could be drawn regarding his current financial situation. Accordingly, based on the administrative record, I find that none of the mitigating conditions apply.

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 evidence 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 this nation's secrets.³ Applicant failed to meet his burden of proof and persuasion.

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 factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F. I gave due consideration to all the favorable and extenuating factors in this case, including the circumstances outside of Applicant's control that negatively impacted his finances and the candor he exhibited during the course of the security clearance process. However, after weighing the favorable and unfavorable information, Applicant's financial situation continues to raise a security concern. Overall, the record evidence leaves me with questions and doubts about his present 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
Subparagraphs 1.a – 1.o:	Against Applicant

³ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

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