



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-02907
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his financial situation. He did not provide sufficient evidence showing that he has responsibly addressed his delinquent debts. His failure to provide such evidence leaves security concerns raised by this delinquent debt unmitigated. Clearance is denied.

Statement of the Case

On November 23, 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 Applicant answered the SOR and requested a determination based on the administrative (written) record.

On February 3, 2016, Department Counsel prepared his written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings,

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.

Applicant's security clearance application (SCA), a summary of his security clearance background interview (clearance interview), and several credit reports. These exhibits were pre-marked as Items 1 – 7 and admitted into the record without objection.

Applicant was advised in the FORM and in a cover letter accompanying the FORM that he had 30 days from his receipt of the FORM to submit a response, to include raising an objection to the evidence offered by the Government and providing documentation to corroborate his statements. Applicant received the FORM on February 9, 2016, but did not submit a response.²

On December 6, 2016, I was assigned Applicant's case. On my own motion, I opened the record to provide him a final opportunity to submit a response.³ Applicant submitted a short e-mail response that was marked and admitted into the record as Item 8. The record closed on December 29, 2016.

Findings of Fact

Applicant, who is in his early seventies, is married with two children. He is employed by a defense contractor as an engineer and has been with his current employer since 1999. He was in the inactive reserve with the U.S. Army from 1968 to 1971, and received an honorable discharge. He has held a security clearance for many years. In 2012, he submitted an SCA as part of a periodic reinvestigation.

Applicant disclosed on his SCA and discussed during his clearance interview his delinquent accounts. He explained that his financial situation was negatively impacted by his own and his wife's medical issues, which left her unable to work and forced him to take off time from work. He accepted a credit offer for a \$50,000 personal loan, which he used to pay for household expenses while on medical leave. He was unable to pay back the debt and two other debts listed on the SOR. These three SOR debts went delinquent in about 2009 or 2010.

Applicant provided documentation with his Answer that one of the debts, a charged-off credit card account for \$4,770 referenced in SOR 1.b was canceled by the creditor.⁴ SOR 1.b is resolved.

Applicant also provided documentation with his Answer that his pay was garnished for the \$50,00 debt referenced in SOR 1.c, which is the unsecured personal loan that he took out while on medical leave. His pay was garnished from December 2011 to November 2013, and the debt was reduced to about \$34,000. An October 2015 credit report submitted by the Government with the FORM indicates that the account

² FORM at 4; Appellate Exhibit (Ax.) I (cover letter and acknowledgment of receipt).

³ See Ax. II. See *also*, Ax. III (administrative documentation that Applicant remains sponsored for a clearance by his employer).

⁴ Item 2 at 10 (1099-C); Item 5 at 4 (2012 credit report reflecting same account number).

was closed in March 2014 with \$0 past due, but incorrectly reflects that Applicant is deceased.⁵ Applicant has attempted to correct this wrong information, but did not submit any evidence as to what efforts he has made in the past three years to resolve the debt.

Applicant also did not submit documentary evidence to corroborate his assertion that he made some payments towards the satisfaction of the \$4,900 delinquent credit card debt listed in SOR 1.a. He claims that he recently attempted to reestablish a payment plan with the creditor. He discussed this debt during his October 2012 clearance interview.⁶ The delinquent debts listed in SOR 1.a and 1.c, which total nearly \$40,000, remain unresolved.

Applicant did not submit evidence of having sought or received financial counseling. The record is silent as to his current finances. In his response to the FORM, Applicant notes that he plans on retiring in the coming months and hopes to retain a clearance to continue working as a federal contractor until his retirement.

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

⁵ Item 2 at 5-9; Item 7 at 4.

⁶ Item 4 at 3-4; Item 5 at 7, 12; Item 6 at 2.

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 applicant 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 applicant’s delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.⁷

The record evidence reflects that Applicant has a history of not meeting his financial obligations and, at a minimum, has been 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).

Once disqualifying conditions are established, the burden shifts to an applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. ISCR Case No. 15-01208 at 4 (App. Bd. Aug. 26, 2016) (citing Directive ¶ E3.1.15). The financial considerations guideline lists a number of conditions that can mitigate the security concern, including the following:

⁷ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 financial problems were primarily attributable to his own and his wife's medical issues. Understandably, it can take a person time to address and resolve financial problems stemming from matters beyond their control, especially those involving medical issues. Furthermore, a security clearance decision does not merely rest upon the resolution of all past-due debts alleged in an SOR. Instead, a judge examines the circumstances leading to the debt and the manner in which the person handles his/her financial situation to attempt to discern how they may handle their security obligations. See ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

In the present case, Applicant incurred the delinquent debts at issue approximately seven years ago. The record is devoid of any evidence reflecting voluntary action on Applicant's part to address his delinquent accounts and take control of his finances. Notably, the garnishment for the debt referenced in SOR 1.c ended over three years ago, reducing the overall balance from over \$50,000 to approximately \$34,000. Applicant presented no evidence that he has attempted to work out a payment plan to resolve the remainder with the creditor, who appears to have stopped trying to collect on the debt after Applicant was incorrectly reported as deceased. Under these circumstances, none of the mitigating conditions fully apply. Applicant's accumulation of delinquent debt totaling nearly \$40,000 and failure to submit clear, concise, and unambiguous evidence showing responsible action on his part to resolve his financial situation leave the security concerns at issue unmitigated.⁸

⁸ Applicant admitted the two SOR debts referenced in 1.a and 1.c. One no longer appears on the most recent credit report admitted into the record, while the other delinquent account is listed with a zero past-due balance. However, as this recent credit report (Item 7) also lists Applicant as deceased, this

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 this nation's secrets.⁹ Applicant failed to meet his burden.

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, including the whole-person factors listed at AG ¶ 2(a). I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's years of holding a security clearance and the unfortunate circumstances leading to his financial problems. However, after weighing the favorable and unfavorable evidence, Applicant's financial situation continues to raise a security concern. Overall, the record evidence leaves me with doubts about his present eligibility for continued 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 and 1.c:	Against Applicant
Subparagraph 1.b:	For 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 continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

presumably favorable information is of questionable reliability and of limited evidentiary value in assessing his continued suitability to hold a security clearance. See ISCR Case No. 15-03527 (App. Bd. Dec 29, 2016) (adverse decision upheld where applicant failed to present clear evidence regarding his/her efforts to address an SOR debt that no longer appeared on his credit report).

⁹ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).