



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08263
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

01/19/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his accumulation of a sizeable amount of delinquent debt after receiving a Chapter 7 bankruptcy discharge in 2008. He has not obtained financial counseling and his financial situation is not under control. Clearance is denied.

Statement of the Case

On May 2, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR), notifying him that his circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a hearing to address the security concerns.

On September 27, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling Applicant's hearing for November 8, 2016. Applicant failed to

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by DOD on September 1, 2006.

appear. Based on Applicant's claim that he had not receive the notice, I rescheduled the hearing for December 1, 2016. The hearing was held on the rescheduled date.

At the hearing, the exhibits offered by the parties (Government Exhibits 1 – 5 and Applicant's Exhibits A and B) were admitted into the administrative record without objection. Applicant testified at the hearing and afterwards submitted additional evidence (Exhibit C), which was also admitted into the record without objection. The December 1, 2016 hearing transcript (Tr.) was received by DOHA on December 13, 2016, and the record closed on January 2, 2017.²

Findings of Fact

Applicant, 41, is a high school graduate with two years of college education. He is married and has six (living) children. His wife and children currently reside in State A, while he is working in State B. He has held a security clearance in connection with his employment as a federal contractor since approximately 2009. Currently, Applicant is employed as a construction security technician and has been with his present employer since approximately July 2014.

Applicant has experienced financial problems for several years. In 2008, he filed for Chapter 7 bankruptcy and had over \$35,000 in delinquent debt discharged. After the bankruptcy discharge, Applicant's financial situation did not improve due to periods of unemployment and underemployment. His finances were further damaged when his daughter became ill and he incurred large, unreimbursed medical bills. His daughter passed away from her illness in 2016.

The SOR lists 21 delinquent non-medical debts totaling over \$58,000 for past-due child support (about \$18,000),³ rent owed for an apartment vacated in 2010 (nearly \$4,600),⁴ traffic tickets in collection (about \$1,700),⁵ repossessed vehicle or delinquent car loan (\$15,000 past-due),⁶ and other consumer-related debt.⁷ He also has nearly \$17,000 in delinquent medical debt related to his daughter's illness and death.⁸

² Prehearing scheduling correspondence and other administrative, non-substantive documents are attached to the record as Appellate Exhibits I - VII.

³ SOR 1.c and 1.e. Tr. 38-44.

⁴ SOR 1.g. Tr. 55-56.

⁵ SOR 1.x, 1.z, 1.cc – 1.gg. Tr. 55-56.

⁶ SOR 1.b and 1.t. Tr. 52-53, 57-59.

⁷ SOR 1.b and 1.t. Tr. 52-53, 57-59.

⁸ The SOR references at 1.d, 1.i – 1.o, and 1.q – 1.s medical debts that, notwithstanding the total amount past due, are not particularly relevant in assessing Applicant's security worthiness. Accordingly, these allegations are decided in Applicant's favor.

Applicant has not addressed any of the SOR debts, except his delinquent student loan account that is being paid through an involuntary wage garnishment.⁹

Applicant has not obtained financial counseling, because he does not believe his financial situation “is to the point that it’s unreasonable.”¹⁰ His current plan to resolve his financial problems is dependent on receiving an overseas assignment that will pay him a higher wage, which itself is contingent on maintaining a security clearance.

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.

⁹ SOR 1.h. Tr. 47-51; Exhibits A, B.

¹⁰ Tr. 79.

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).

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 security concern under this guideline 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 financial circumstances cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.¹²

The record evidence establishes that Applicant has a long history of financial problems and is unable to pay his debts. This evidence raises the security concern at issue and the disqualifying conditions listed at AG ¶ 19(a) and 19(c).

The guideline also lists a number of conditions that could mitigate the financial considerations security concern. I have considered all the potential mitigating conditions in assessing Applicant's case, 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

¹² ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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 finances were clearly impacted by significant matters largely beyond his control. However, he does not yet appreciate the depth and scope of the problem, nor the need to take action to address it, as evidenced by his failure to seek out and receive financial counseling. As of the hearing, the only SOR debt that was being addressed was one where the creditor was forced to secure a wage garnishment. This does not amount to a good-faith effort on Applicant's part to address his past-due debts. After considering all the record evidence and based on Applicant's long track record of not paying his debts, his promises to resolve his debts in the future are insufficient to mitigate the security concerns raised by his present financial situation.

Specifically, I find that AG ¶ 20(b) applies in part, but is insufficient, even after taking into account the favorable whole-person factors in this case,¹³ including Applicant's dedication to his family and years of holding a security clearance without apparent issue, to mitigate the security concerns raised by his financial circumstances.

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.¹⁴ Applicant failed to meet his burden. Overall, the record evidence leaves me with doubts about his present eligibility for continued access to classified information.

¹³ See generally AG ¶ 2(a).

¹⁴ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

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.c, 1.e – 1.h, 1.p, 1.t – 1.gg:	Against Applicant
Subparagraphs 1.d, 1.i – 1.o, and 1.q – 1.s:	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