



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-03548
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by a history of failing to pay his financial obligations. He amassed over \$100,000 in delinquent debt, which he recently discharged through Chapter 7 bankruptcy. Delinquent federal taxes and student loans totaling over \$70,000 remain outstanding. Notwithstanding the presence of some mitigation, it is too soon to conclude that his finances are under control and financial problems will not recur. Clearance is denied.

Procedural History

On August 20, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant's conduct and circumstances raised security concerns under the financial considerations guideline.¹ On October 30, 2014, Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information.

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.

On January 21, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for March 19, 2015. I convened the hearing as scheduled. At hearing, Department Counsel offered Government Exhibits (Gx.) 1 – 6. Applicant testified and offered Applicant's Exhibits (Ax.) A – J. He requested additional time post-hearing to submit documentary evidence. I granted his request, and he timely submitted Ax. K – Ax. N. All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on March 27, 2015, and the record closed on April 3, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant, 44, is a federal contractor and has been working for his current employer since 2002. He is a few credits shy of completing an undergraduate degree in criminal justice. He has held a security clearance since 2003. He submitted reference letters from coworkers and others relaying their favorable impressions regarding his work ethic, professionalism, honesty, and dependability.²

Applicant has had financial problems for several years. His 2009 credit report reflects numerous adverse accounts, including a seriously past-due mortgage, a charged-off second mortgage, student loans in collection status, and several other collection accounts.³ His current security clearance application reflects delinquent federal and state taxes, student loans, and mortgage-related debt, as well as a failure to file federal and state tax returns.⁴

In 2013, Applicant filed for Chapter 7 bankruptcy, declaring over \$150,000 in liabilities, of which more than \$70,000 was for delinquent taxes and student loans. Applicant reported approximately \$30,000 in assets and a gross income of about \$60,000. He also reported that, after paying his recurring monthly expenses, he was running a monthly deficiency of about \$100. In July 2014, Applicant was granted a Chapter 7 discharge that resolved all his past-due debts, except for his outstanding federal taxes and student loans.⁵

Applicant claims that his financial trouble stems from his inability to pay the mortgage on his former home following the divorce from his ex-spouse in 2003. He

² Tr. at 14, 21-22; Gx. 1; Ax. E.

³ Gx. 3.

⁴ Gx. 1 at 26-30.

⁵ Gx. 2; Ax. H. The bankruptcy resulted in the discharge of Applicant's \$59,000 delinquent mortgage. (Gx. 2, *Schedule F*) He received a settlement of \$4,500 to resolve a claim that the creditor garnished his pay after he filed for bankruptcy. (Ax. C) The record is silent as to how Applicant used this money, but he testified that the total amount in his checking and savings account was less than \$1,000. (Tr. at 65)

claims his mortgage lender accepted a short sale, but the loan was sold to another lender that secured a judgment after the sale and garnished his pay to recover the deficiency balance. He submitted a letter from the lender holding a second mortgage lien on the property, which reflects that it would accept \$2,000 from a short sale of the property. He did not submit documentation regarding the purported short sale. He continues to reside at the residence and pays rent to his cousin. He also states that his financial trouble is related to his own medical issues, and the financial strain of supporting and caring for his elderly father.⁶

At hearing, Applicant discussed his delinquent taxes and student loans. He testified that in 2010 he deliberately changed his withholdings to increase his take-home pay. At around the same time, he took a vacation trip to the Caribbean. He was unable to pay the resulting tax obligations, and did not file his federal tax returns for tax years 2010 through 2012. He currently owes the IRS approximately \$34,000 for tax years 2010 through 2012. He received notices from the IRS regarding his overdue tax returns, but took no action to resolve his tax situation until recently. He now has an installment agreement with the IRS. The installment agreement requires him to pay \$150 a month, and his first monthly payment was due in November 2014. Applicant did not make the initial four monthly installment payments. He waited until shortly before the hearing to make a lump sum payment of \$600 to the IRS for the missing payments.⁷

About a month before the hearing, Applicant also entered into an agreement to resolve his delinquent student loans, which total over \$40,000. He testified that the student loan repayment plan requires that he pay \$295 monthly. He further testified that, as of the hearing, he was two months in arrears on his student loans. He did not submit documentation regarding the student loan repayment plan. He timely submitted his April 2015 monthly payments for his overdue taxes and student loans.⁸

Applicant received credit counseling through the Chapter 7 bankruptcy. After the hearing, he signed up for further financial counseling. He submitted a personal financial statement (PFS), which reflects that after paying his monthly expenses and debts, he supposedly has about \$170 in discretionary income to pay unexpected expenses.⁹ Applicant did not explain why, if his PFS is accurate, he failed to pay his required monthly installment payments to the IRS for four straight months.

⁶ Tr. at 41-46; 72-73; Gx. 2, *Statement of Affairs* at 2; Ax. F; Ax. G; Ax. K.

⁷ Tr. at 48-60; Gx. 1; Ax. D, Ax. I. The SOR alleges Applicant's failure to file his federal and state tax returns for 2010 and 2011. Applicant's failure to file and pay his federal taxes for the 2012 tax year is only being considered in assessing his mitigation case and whole-person factors.

⁸ Tr. at 31-44, 66-68; Gx. 6; Ax. D, Ax. I; Ax. N.

⁹ Gx. 2; Ax. J; Ax. M.

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.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

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, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

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.¹⁰

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an

¹⁰ Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). In making such determinations, judges examine an individual’s past history and current circumstances. ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014); ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013).

applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern regarding individuals who fail to pay their financial obligations and incur delinquent debt 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. . . .

Thus, the financial considerations security "concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts."¹¹ The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant's track record of not paying his financial obligations is evidenced by the accumulation of over \$100,000 in delinquent debt that was discharged through Chapter 7 bankruptcy about a year ago. His reported liabilities were nearly three times greater than his current gross income,¹² and over five times greater than his reported assets. His current delinquencies include federal taxes and student loan debt totaling over \$70,000. Even after becoming aware of the Government's concerns regarding his finances, Applicant continued to fail to meet his financial obligations. Notably, he failed to abide by the terms of the installment agreement he entered into with the IRS. The record evidence raises the financial considerations security concern and establishes the following disqualifying 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; and

¹¹ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See *also* ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

¹² See Tr. at 72 (from 2010 to present, yearly gross income went from \$38,000 to about \$60,000).

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

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; and

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

Applicant's financial problems are, in part, due to matters outside of his control. Specifically, medical issues and the financial support he provides his elderly father. However, the primary cause of his financial predicament is his own inability to manage his finances. He deliberately changed his withholdings in 2010 to reduce the amount deducted from his earnings for federal and state taxes. He used his increased take-home pay for other matters, including a trip to the Caribbean. He was unable to pay his taxes, and did not file his federal tax returns when due for three consecutive years.

Moreover, Applicant failed to establish that he responsibly managed his finances under the circumstances and in good faith resolved his past-due debts. He took no action to resolve his past-due debts, to include his delinquent federal taxes and student loans, until his financial situation placed his security clearance and the job that requires he maintain a clearance in jeopardy.¹³ Although bankruptcy is a viable and legal avenue by which individuals can resolve their debts, in the year that has passed since Applicant's debts were discharged through bankruptcy he has demonstrated a lack of commitment to paying his financial obligations. Applicant's past history and recent conduct in failing to comply with the terms of his IRS installment agreement, as well as being two months in arrears on his student loan debt provides little comfort that he will manage his finances in a responsible manner. ISCR Case No. 10-03578 at 3 (App. Bd. Oct. 4, 2012) ("the successful receipt of a [bankruptcy] discharge, *standing alone*, does not satisfy the good-faith requirement of AG ¶ 20(d)," nor necessarily mitigate security concerns raised by the accumulation of delinquent debt) (emphasis in original).

¹³ See, Tr. at 39-40, 58.

Applicant has received financial counseling. He also recently agreed to repayment plans to resolve his past-due federal taxes and student loans. However, his track record over the past year and his testimony denote a lack of true financial reform. Accordingly, it is far too soon to conclude that his financial situation is under control and financial problems will not recur. AG ¶¶ 20(a) through 20(d) do not 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 nine factors listed at AG ¶ 2(a).¹⁴ I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's honesty during the security clearance process and that he has held a clearance for over 10 years without apparent issue. Additionally, I took into account the favorable character references. However, the favorable record evidence does not outweigh the security concerns raised by Applicant's long-standing financial problems. His relatively recent action to resolve a substantial amount of past-due debt is insufficient to mitigate concerns raised by his adverse financial history, including three successive years of failing to meet the obligation of all citizens to file and pay their taxes. Furthermore, Applicant's failure to comply with the terms of the IRS installment agreement undercuts evidence he submitted regarding the supposed healthy state of his current financial situation.

An individual is not required to be debt free, or required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, individuals seeking a security clearance must establish that they manage their finances in a manner expected of those granted access to this nation's secrets. Notwithstanding the presence of some favorable evidence, Applicant failed to meet his burden of persuasion.¹⁵ Consequently, the record evidence leaves me with doubts and questions about Applicant's present eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations) **AGAINST APPLICANT**

Subparagraphs 1.a – 1.s: **Against Applicant**

¹⁴ The non-exhaustive list of factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

¹⁵ ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (Favorable evidence regarding individual's character "may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").

Conclusion

In light of the record evidence and for the foregoing reasons, 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