

On February 12, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains six documentary exhibits that are admitted into evidence, without objection, as Government Exhibits (Gx.) 1 – 6. Applicant did not submit a response to the FORM within the allotted 30-day period. See Hearing Exhibit 1 (acknowledging receipt of FORM).

On May 28, 2015, I was assigned Applicant's case. On my own motion, I opened the record to provide Applicant a final opportunity to submit a response to the FORM. See Hx. II (e-mail to parties). Applicant elected not to submit a Response, and the record closed on June 10, 2015.

Motion to Withdraw

Department Counsel moved to withdraw SOR 1.b and, without objection, the motion is granted. The SOR now alleges nine debts at SOR ¶¶ 1.a, and 1.c – 1.j.

Findings of Fact

Applicant is a federal contractor and has been working for his current employer since 2014. He enlisted in the U.S. military after graduating from high school, and was discharged after three years of honorable service. He is married and has one minor child. He is seeking a security clearance for the first time in connection with his job.

Applicant's financial problems started in late 2010, early 2011, when he was unemployed for a period of about six months. He also attributes some of his financial problems to starting his own business in 2013. He disclosed on his security clearance application (SCA) and discussed with a security clearance background investigator how he ended up incurring a substantial amount of delinquent debt. Applicant explained that while unemployed, he started using his credit cards to purchase groceries, gas, and other household items. He also discussed with the investigator falling behind on the mortgage on his home when he started his own business and it failed to generate sufficient income to keep pace with his family's expenses.

Applicant addressed his mortgage by negotiating a modification.² He submitted documentary proof with his Answer of satisfying the \$380 debt referenced in SOR ¶ 1.h. He claimed in his SCA and during his background interview that he received financial counseling, but did not submit documentation to support his claim. He also did not submit evidence of having taken steps to address or documentation to support a valid claim disputing the remaining eight SOR debts. These eight debts are listed at SOR ¶¶ 1.a, 1.c – 1.g, and 1.i – 1.j, and reflect debts that have been reduced to judgment, charged off, or are in collection. The debts range in outstanding amounts of \$110 to over \$5,000. The eight SOR debts together total over \$15,000, and remain unresolved.³

² Gx. 4 at 2; Gx. 6 at 5.

³ Gx. 4 (eight SOR debts listed on recent credit report).

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.

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 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 accumulates a substantial amount of 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."⁴ 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 accumulated over \$15,000 in delinquent debt that remains unresolved.⁵ This record evidence raises the financial considerations security concern. It also establishes AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

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;

⁴ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

⁵ ISCR Case No. 14-03910 at 2 (App. Bd. June 24, 2015) ("it is well settled that adverse information from a credit report" will generally shift the burden to an applicant "to either establish that [they are] not responsible for the debt or that [other] matters in mitigation apply.").

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 and provides documented proof to substantiate the basis of the dispute.

Applicant's financial problems are partly attributable to a period of unemployment and his businesses' failure to generate sufficient income. He responsibly addressed his mortgage problem by negotiating a loan modification and by satisfying one of the SOR debts. However, AG ¶ 20(b) is not fully applicable because he did not submit evidence of attempting to address his other past-due debts, to include the minor debts referenced in the SOR. He also did not submit evidence regarding his current finances nor provided documentation to support a reasonable basis upon which he could dispute the validity of the debts. His delinquent debts remain unaddressed and unresolved. Although applicants for a security clearance are 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, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of substantial delinquent debt.⁶ Applicant, even after being informed on numerous occasions of the need to submit documentation to support his claims,⁷ failed to do so. Accordingly, I find that AG ¶ 20(b) partially applies, but none of the other mitigating conditions 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).⁸ I hereby incorporate my comments under Guideline F. I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's military service and the fact that his debts were incurred in trying to support his family, not for other reasons that would raise an independent security concern. However, a significant amount of delinquent debt remains unresolved, and the serious security concerns raised by such debt remains unmitigated, especially in light of the lack of any evidence presented by Applicant regarding his current finances. After

⁶ ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008).

⁷ See Hx. I; FORM; Hx. II.

⁸ 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.

weighing the favorable and unfavorable evidence, and considering the legal requirement that close cases, such as the present one, be decided in favor of national security, I conclude that Applicant failed to meet his burden in mitigating the financial considerations security concern. Accordingly, the record evidence leaves me with doubts and questions about Applicant's 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.j:	Against Applicant

Conclusion

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