



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-01186
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his delinquent debts. He failed to supply any supporting documentation reflecting what steps, if any, he has taken to address his past-due debts and take control of his finances. Clearance is denied.

Statement of the Case

On August 18, 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 October 12, 2015, Applicant answered the SOR and requested a determination based on the administrative (written) record.

On December 18, 2015, Department Counsel prepared her written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the Applicant’s security clearance application (SCA), several credit reports, public court records, and

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.

the summary of Applicant's background interview. These evidentiary exhibits were pre-marked as Items 5 – 13 and admitted into the record without objection.²

Department Counsel specifically noted in the FORM that Applicant had failed to supply any documentation to corroborate his past assertions that he had addressed some of the SOR debts or to substantiate the basis of his dispute of some of the debts. Department Counsel went on to note that "[t]o date, there is no evidence of any efforts to pay or otherwise resolve these delinquencies [referring to the SOR debts]."³ 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 and any documentation in support of his case.⁴ Applicant received the FORM on January 6, 2016, but did not submit a response or any documents in support of his case.⁵

On April 12, 2016, I was assigned Applicant's case. On my own motion, I opened the record to provide Applicant a last opportunity to submit a response and any favorable documentation.⁶ Applicant did not submit any documentation, and the record closed on April 29, 2016.

Findings of Fact

Applicant is in his late thirties and is employed as a network engineer by a federal contractor. He is also attending college part time. He was first granted a security clearance in 2007. He separated from his wife in 2008 and, as of November 2012, had filed for divorce. He has four children.

Applicant served in the U.S. military from 2000 to 2011, receiving an honorable discharge. After leaving the military, Applicant was unemployed for 11 months before being hired by his current employer in September 2012. He submitted an SCA in connection with his job and listed three delinquent accounts in response to relevant questions regarding his financial record. He claimed to have addressed the three delinquent debts. A subsequent credit check revealed numerous other delinquent accounts. During his November 2012 background interview, Applicant stated that his financial problems were due to a combination of circumstances beyond his control, namely, the separation from his wife and unemployment after leaving the military. He told the background investigator that his plan was to satisfy his minor debts, which he described as debts in amounts of \$1,000 or less, within a year and make payment arrangements with the creditors holding debts in higher amounts to eventually satisfy all his delinquencies.

² Items 1 – 4 are the pleadings and miscellaneous administrative documents.

³ FORM at 5.

⁴ FORM at 3; Appellate Exhibit (Ax.) I (cover letter).

⁵ Ax. II (acknowledgment of receipt).

⁶ See Ax. III.

The SOR lists 26 delinquent debts in collection, charged off, or reduced to judgment. The 26 debts total over \$60,000. The debts range in amounts of \$50 for a collection account (1.z) to a 2012 judgment for over \$17,000 (1.b). Applicant admits in his Answer the debts listed at 1.a – 1.g, 1.i – 1.k, 1.u, 1.w, 1.y, and 1.z; which together total over \$30,000.

Applicant stated in his SCA and during his background interview that he satisfied the \$6,200 judgment referenced in SOR 1.o. Public court records indicate that the judgment, which is from 2008, remains unsatisfied.⁷ Applicant also claimed during his background interview that he was making \$200 monthly payments to satisfy the \$17,000 judgment referenced in SOR 1.b. Applicant previously stated that the judgment is for a car loan that he cosigned with his wife and, when she did not make the monthly payments, the car was repossessed.⁸ He provided no documentation to substantiate his past statements regarding the \$17,000 judgment.

Applicant did not provide documentation to substantiate the basis of his dispute of any of the SOR debts, such as a divorce decree or property settlement indicating that his wife is responsible for the \$17,000 judgment. He also did not submit any documentation to corroborate his prior statements that he has addressed some of the SOR debts. The record is silent as to whether Applicant has received any financial counseling, and he provided no information regarding his current finances.

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.

⁷ Compare, Item 5 at 39 and Item 13 at 2-3, *with*, Item 12.

⁸ Compare, Item 5 at 41-42 and Item 13 at 3, *with*, Item 2 (admits debt in Answer) and Item 6 at 2 (credit report reflects judgment).

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, 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).

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 initial financial problems were attributable to marital separation and unemployment after leaving the military. Although it is generally well recognized that it can take time to address and resolve financial issues, Applicant has been employed full time with his current employer for over three years and provided no documentation to reflect what steps, if any, he has taken to address his past-due debts. He also did not provide any documentation to substantiate the basis of his dispute of the \$17,000 judgement referenced in SOR 1.b or any of the other SOR debts. The SOR debts are reflected on at least one of the credit reports and/or other evidence admitted into the record.⁹ Based on the administrative record, 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 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.¹⁰ Applicant failed to meet his burden.

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

⁹ ISCR Case 14-03910 at 2 (App. Bd. Jun. 24, 2015) (“[I]t is well settled [in DOHA proceedings] that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14 of the Directive [to prove controverted] allegations. At that point, the burden shifts to Applicant to establish either that she is not responsible for the debt or that matters in mitigation apply.”).

¹⁰ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

factors listed at AG ¶ 2(a).¹¹ 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 that he has held a security clearance in the past. 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 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.z:	Against 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 access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

¹¹ 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.