



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



In the matter of:)
)
) ISCR Case No. 18-00967
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2019

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to demonstrate financial responsibility, or that his financial problems are being resolved. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 25, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on April 23, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on May 11, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to another administrative judge in September 12, 2018, and reassigned it to me on November 29, 2018. The notice of hearing was issued on October 25, 2018, setting the hearing for November 29, 2018. At the hearing, the Government offered seven exhibits (GE 1 through 7). Applicant testified and submitted

two exhibits post-hearing (AE 1 and 2). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on December 7, 2018.

Findings of Fact

In his SOR answer, Applicant admitted all of the SOR 13 financial allegations (§§ 1.a through 1.m). He submitted comments in mitigation and explanation noting that he had filed for Chapter 7 bankruptcy (SOR § 1.a) and was anticipating the discharge of all remaining SOR debts (§§ 1.b through 1.m) in the near future, releasing him of any legal obligation to pay those debts. (Answer to SOR) His SOR admissions and those at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 35 years old. He graduated from high school in 2001, and has completed no additional formal education. He married in 2006, and has five children (two biological, one foster child, and two adopted) ages 16, 10, 3, and 2 (twins).

Applicant has been working for federal contractors since 2007. He has performed the same work, but for several federal contractors depending on who held the contract. He was granted a secret clearance in 2008, which has been continued to present. Applicant was hired by his current employer and clearance sponsor in January 2017. He seeks the continuation of his clearance which is required for his work with his current employer.

In response to Section 26 (Financial Record) of his 2017 SCA, Applicant disclosed he was seeking assistance to resolve his financial problems, and alluded to attempts to refinance his home, a car, and a late mortgage payment. He noted that he had notified his facility security officer (FSO) of his financial problems. He also stated that he consulted an attorney in October 2017, with a view to filing Chapter 7 bankruptcy, and was in the process of setting up a credit counseling class.

In his SOR response, Applicant attributed his financial problems to the higher cost of medical insurance, out-of-pocket medical expenses, medical leave, reduced income due to being in disability, remodeling his home for his growing family, his inability to refinance his home, having to purchase a home water treatment system, and the reduction on his wife's working hours, and ultimately her unemployment to take care of their children in October 2017.

Applicant has been continuously employed since 2007, with no periods of unemployment. However, he was out of work due to undergoing surgery and was placed on disability between April and October 2018. While in short-term disability (April through August 2018), his income was reduced by \$1,000 per month, and while in long-term disability (September through October 2018), his income was further reduced by an additional \$300 per month.

At hearing, Applicant acknowledged that his financial problems were partially due to him making poor financial decisions. He noted that he went through periods where he used his credit cards to supplement his and his family's income and to pay for their living expenses and yearly vacations. (Tr. 31, 92) He averred that other expenses were due to circumstances beyond his control. (Tr. 26) As examples, he noticed the cost of his daughter's braces, totaling \$5,000 that he incurred after his insurance denied payment in in 2017. He took a loan to pay for his daughter's braces in August 2018. He also noted an unknown number of expensive fertility tests that his wife underwent to determine why they could not have more children in about 2012-2013. (Tr. 28)

After the tests, Applicant and is wife decided to adopt, and they incurred additional expenses to get their home certified for the adoptions, including, a home water filtration system at a cost of over \$5,500. He later defaulted on that account's payments. The debt was included in his Chapter 7 bankruptcy, and Applicant claimed he reaffirmed the debt after his bankruptcy discharge. (SOR ¶ 1.g) However, as of his hearing date, he had not set up a payment plan to pay this creditor.

Concerning his yearly vacations, Applicant testified that his family have been taking "one big [vacation] once a year" during the last six years. They drive to Florida for a week to 10 days, and try to stay with family. (Tr. 93) Sometimes, Applicant would take leave without pay and use his credit cards to pay for his vacation expenses. At his hearing, he acknowledged that it was a poor decision to spend money you do not have. (Tr. 83)

Applicant and his wife bought a small house in 2003 and lived in it until 2011. They rented a residence between June 2011 and April 2012. Sometime between 2010 and 2011, Applicant took a \$10,000 personal loan to consolidate his debts. (Tr. 54) That loan remained delinquent until it was discharged through bankruptcy in 2018. In 2013, Applicant took a \$10,000 loan to purchase a car for his wife. In November 2017, Applicant voluntarily returned a car to the creditor because he no longer could afford the payments. The residual debt after the sale of the car was also discharged through bankruptcy.

Applicant purchased their current home in 2012. He explained that up until then, all the furniture they had was second hand. When they bought their current home they bought new furniture (a lawn mower, tools, a generator, a snow blower, etc.) and acquired a significant debt. (Tr. 65-66) He took another personal loan to consolidate his debts. (Tr. 58) He claimed some of the debt was paid, but some carried on over time. (Tr. 32)

In 2016, Applicant took a \$50,000 personal loan to consolidate debts and use the remaining balance to finish his house basement. (Tr. 31, 36, SOR ¶ 1.g) He used part of the \$50,000 loan to pay previous debt consolidation loans. (Tr. 56) His plan was to finish the house basement, anticipating based on his own research, that the house reappraisal would be at least \$40,000 to \$50,000 higher. He then would refinance the house for the higher value and take some of his equity money to pay off the \$50,000

personal loan. However, Applicant's mortgage payment became 30-days delinquent in October 2017, and he no longer qualified for the refinancing loan.

Applicant's income was insufficient to pay for his living expenses and accumulated debts. He had maxed out his credit cards and was unable to pay them. In about October 2017, he consulted with a bankruptcy attorney, and scheduled his credit counseling classes. He notified his facility security officer of his financial problems in December 2017. He filed his Chapter 7 bankruptcy in March 2018, and was discharged of his dischargeable debts in July 2018. (GE 7) Concerning his current financial situation, Applicant testified he is making \$82,000 yearly. His monthly take-home pay is about \$3,000.

Applicant testified that he reaffirmed his mortgage debt and has been making his mortgage payments. He submitted a checking account statement showing he paid \$1,969 in February, March and April 2018; made two payments of \$1,969 in May 2018; made payments in June and July 2018; skipped the August 2018 payment; made a payment in September 2018, and made two payments in October 2018. Applicant also testified that he reaffirmed his car loan after the bankruptcy. He presented a receipt from November 2018, showing he paid \$260 to a credit union, and that the next payment would be due in December 2018. (AE 1)

Applicant expressed remorse for his financial problems. He claimed to recognize the many financial mistakes he made, although he does not regret some of the expenses incurred such as buying the new home, the new furniture, and the fertility medical testing. He testified that he and his wife no longer use credit cards, and only purchase necessities with cash.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

Applicant's financial problems are documented in the record. He had financial problems before 2012, and took a loan to consolidate his debts. In 2012, he purchased a home above his financial means and incurred an extensive debt furnishing the house. He took another loan to buy a car in 2013. Applicant then took a \$50,000 loan in 2016, seeking to pay his delinquent loans, consolidate his debts, and finish his home basement. He speculated that the anticipated higher value of the house with a finished basement would allow him to refinance the house at a higher price. He would then use some of his refinancing money to pay his prior \$50,000 loan. However, his mortgage became delinquent for 30 days and he was disqualified from refinancing the house.

Applicant's income was insufficient to pay for his living expenses and accumulated debts. He maxed out his credit cards paying for his living expenses and other discretionary expenses. He was unable to pay his debts and they became delinquent. He notified his facility security officer of his financial problems in December 2017, and he filed his Chapter 7 bankruptcy in March 2018.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.¹

¹ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of

The Appeal Board concisely explained an applicant's responsibility for proving the applicability of mitigating conditions as follows:

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. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

None of the financial considerations mitigating conditions are fully raised by the facts in this case and they do not mitigate the security concerns. Notwithstanding his recent bankruptcy discharge, Applicant's financial problems are recent and ongoing.

Applicant reaffirmed three loans following his bankruptcy discharge. He presented evidence that he established a payment agreement with the mortgage creditor and has been making monthly payments. His receipt for one payment to a credit union is insufficient for me to conclude that Applicant has been making recurrent payments on his car loan. He presented no evidence to show that he established a payment agreement with the third loan creditor, or that he has been making recurrent payments on that loan. Moreover, Applicant did not present sufficient evidence of good-faith efforts to pay his debts before his bankruptcy filing, or that he was financially responsible under his circumstances.

AG ¶ 20(b) partially applies because his medical problems, reduced earnings while in disability, and expenses associated with his daughter's braces, may be considered circumstances beyond his control. Notwithstanding, his evidence is insufficient to show that he was financially responsible under the circumstances. On the contrary, the evidence shows that Applicant has been living beyond his means, supplementing his income with his credit cards, taking recurrent personal loans to pay his credit debts, and ultimately renegeing on his financial obligations.

good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

Applicant received counseling as a result of his bankruptcy filing. However, his evidence is insufficient to show clear indications that his financial problems are resolved or under control. Applicant presented no evidence of contacts with creditors, payments made, or of good-faith efforts to repay his creditors. AG ¶ 20(c) is not applicable. Considering the evidence as a whole, Applicant's evidence is insufficient to demonstrate financial responsibility, or that his financial problems are being resolved. The financial considerations security concerns are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 35, has been employed with federal contractors and has held a clearance since around 2007-2008. His evidence is insufficient to establish a track record of financial responsibility. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. Unmitigated financial considerations security concerns lead me to conclude that granting a security clearance to Applicant is not warranted at this time.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his delinquent debts, a healthy financial picture, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.m:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge