



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



In the matter of:)	
)	
)	ISCR Case No. 18-01362
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2019

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is sufficient to demonstrate financial responsibility. He resolved the delinquent accounts alleged in the Statement of Reasons (SOR) and he is in control of his finances. He mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 6, 2016. He was interviewed by a government investigator on January 10, 2018. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued an SOR on May 18, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on June 7, 2018, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), containing the evidence supporting the security concerns, was provided to Applicant by letter dated February 8, 2019. Applicant received the FORM on February 14, 2019. He was granted a period of 30 days after receipt of the FORM to submit any objections to the FORM

and to provide material to refute, extenuate, or mitigate the concerns. Applicant responded to the FORM on March 7, 2019. He submitted a one-page statement with eight pages of documents proving most of the student loans alleged against him were resolved, and raised no objections to the Government's proffered evidence. The case was assigned to me on April 12, 2019. Absent any objections, I admitted and considered the Government's and Applicant's proposed evidence.

Findings of Fact

In his SOR answer, Applicant admitted the five SOR financial allegations (that he filed for Chapter 7 bankruptcy in 2011, and had four charged-off student loans). (SOR ¶¶ 1.a through 1.e) He also submitted comments in mitigation and explanation. His admissions 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 54 years old. He graduated from high school in 1982, and has completed some college courses. He has been married three times and divorced twice. His most recent marriage was in 2005. He has four children ages 33, 31, 27, and 23, and a stepdaughter age 20.

Applicant enlisted in the Air Force and served on active duty between May 1983 and April 1987. He then served in the Reserve between March 1988 and May 1991. He received honorable discharges for both periods of service. He has held a security clearance since 1983. Applicant's sponsor, a federal contractor, hired him as a mechanic technician in June 2012. He has worked for his employer since June 2012.

In response to Section 26 (Financial Record) of his 2016 SCA, Applicant disclosed that he filed for Chapter 7 bankruptcy in 2011, which was discharged in 2012, and that he had delinquent student loans that he cosigned for his son. Applicant explained to the government investigator during his 2018 interview that his financial problems resulted from a period of unemployment between June 2011 and February 2012, a failed personal business, his son's health problems that caused him to default on his student loans and he was unable to repay them, a couple of judgments filed against him by his ex-wife and her mother, and his use of credit cards to pay for his living expenses. He implied that all these factors came together at about the same time and he was advised by an attorney to file for bankruptcy.

Applicant noted that as a result of his employment with a federal contractor supporting deployed U.S. forces in South-Central Asia, he has been deployed five times during the last 10 years for extended periods of at least a year. His deployments to remote areas have made it more difficult for him to manage his finances and to resolve his debts.

Applicant highlighted that it has been more than seven years since he filed for Chapter 7 bankruptcy. He stated that his financial situation is currently good. He believes that he has learned a hard lesson as a result of his financial problems and no

longer uses credit cards to pay for his living expenses. He stated that he received financial counseling, is living within his financial means, and has acquired no new debt or additional delinquent accounts. He paid off his car, and has a steady job that allows him to meet his financial obligations and living expenses.

Concerning the student loans, Applicant explained that he did not address them sooner because he believed some of the loans had been forgiven by the creditors because of his son's medical condition, and that other loans has been paid off or were being paid by his son. He stated he was unsure of the status of the loans because he and his son had drifted apart and were not communicating.

Applicant presented documentary evidence showing that the creditor of the student loan alleged in SOR ¶ 1.b cancelled the \$21,828 debt in December 2018. (AE 3) Applicant settled the student loan alleged in SOR ¶ 1.c for \$1,008, and paid it off in February 21, 2019. (AE 3) The creditor of the student loan alleged in SOR ¶ 1.d issued an IRS Form 1099-C (showing the debt was canceled, forgiven or discharged, and the person must include the canceled amount in his/her gross income and pay taxes on that income) to Applicant's son on December 31, 2018. (AE 3)

SOR ¶ 1.e alleged a charged-off student loan without an amount or account number. Applicant believed that three loans were discharged by the creditors and that he settled the fourth loan. I note that during the 2018 interview, the investigator noted two other student loans that had been paid off and were not alleged in the SOR. I find SOR ¶ 1.e resolved in Applicant's favor.

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 AGs 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 was unemployed for a significant period and filed for bankruptcy protection in 2011. He also cosigned at least four student loans for his son that became delinquent and were charged off. 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 condition 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

All of the above financial considerations mitigating conditions are partially or fully raised by the facts in this case and mitigate the security concerns. Applicant developed financial problems, in part, because of his unemployment period, failed personal business, and his son's medical problems. Thus, Applicant's financial problems could be attributed to circumstances beyond his control.

Following his bankruptcy discharge, Applicant maintained his financial responsibility and has acquired no additional delinquencies. More importantly, he presented sufficient evidence to corroborate that some of the student loans were cancelled, discharged, settled, or paid off. Applicant's documentary evidence shows that three of the loans alleged in the SOR were resolved. The investigator also discovered two other loans not alleged in the SOR that were paid off before the SOR was issued.

Although Applicant could have been more diligent addressing his delinquent loans, I find that he has been financially responsible under his circumstances. Applicant's evidence is sufficient to demonstrate his current financial responsibility, and that his financial problems are resolved. The financial considerations security concerns are 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, 54, honorably served in the Air Force on active duty for about five years and four years in the Reserve. He has held a clearance since 1983 without concerns, except for those in the SOR. He has been employed with a federal contractor since 2012. He has been deployed to hostile environments five times during the last ten years in support of U.S. forces.

Applicant's evidence is sufficient to establish that circumstances beyond his control contributed to or aggravated his financial problems, and he filed for bankruptcy. After that, he has been financially responsible. He resolved the accounts alleged in the SOR and he is in control of his finances.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.e	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge