



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



In the matter of: )  
)  
) ISCR Case No. 18-02008  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

07/24/2019

**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 22, 2015. He was interviewed by a government investigator on May 2, 2017, and responded to interrogatories on June 27, 2018. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on August 13, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on September 21, 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 January 8, 2019. Applicant received the FORM on January 17, 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, and mitigate the concerns. Applicant did not respond to the FORM. The case was assigned to me on April 12, 2019.

### **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of interview with a government background investigator on May 2, 2017. (FORM, Item 4) Applicant was informed he could object to the summary of his interview, and it would not be admitted or considered, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered. Applicant did not respond to the FORM. I admitted the FORM's proffered evidence and considered it.

### **Findings of Fact**

In his SOR answer, Applicant admitted SOR financial allegations ¶¶ 1.a, 1.d, 1.e, and 1.g. He denied SOR ¶¶ 1.b, 1.c, and 1.f, by stating that he was unaware of these accounts. 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 30 years old. He graduated from high school in 2007, and completed some college courses between 2007 and 2009, but did not earn a degree. He has never been married, but has a son, four years old.

Applicant's employment history shows that he was unemployed between August 2007 and March 2010. He worked for a federal contractor between March 2010 and September 2013. He was unemployed between October 2013 and October 2014, and employed between October 2014 and October 2015. A federal contractor hired Applicant as a mail truck driver in October 2015, and is sponsoring his clearance. This is Applicant's first SCA.

In response to Section 26 (Financial Record) of his 2015 SCA, Applicant disclosed he had financial problems caused by periods of employment and lack of financial backing. He disclosed delinquent student loans and a delinquent television services account. He promised to establish payment arrangements with both creditors as soon as possible.

During his 2017 interview with a government investigator, Applicant was questioned about most of the accounts alleged in the SOR. He explained that unemployment and low earnings prevented him from paying his debts. He volunteered that he had a judgment filed against him and his bank account was levied. He failed to file his 2013 income tax returns and had to file them before filing income tax returns for 2015 and 2016. He claimed he immediately paid whatever taxes he owed.

Concerning his student loans (SOR ¶¶ 1.d and 1.e), Applicant claimed he had consolidated his student loans, established a payment plan, and was making his payments. He stated that he acquired the account alleged in SOR ¶ 1.b in 2013, when he was unemployed and could not make the payments. He claimed that he established a payment agreement with the creditor and paid the account in 2014. Applicant claimed the medical account alleged in SOR ¶ 1.c was paid by his insurance company. SOR ¶ 1.g alleges the same delinquent television services account Applicant disclosed in his 2015 SCA, which is in collection by a collection agency. Applicant failed to present documentary evidence to support any of the above claims.

In his responses to the DOD Consolidated Adjudications Facility interrogatories, dated June 27, 2018, Applicant stated that he had failed to obtain the IRS account transcripts that he was asked to provide for tax years 2013 through 2017, and failed to provide documentation showing the he had filed his state income tax returns for tax years 2013 through 2017. Applicant claimed that he had filed his federal and state income tax returns for the years in question. He failed to present documentary evidence to substantiate his claims. Concerning the delinquent accounts alleged in SOR ¶¶ 1.a through 1.g, Applicant answered that he had not paid or made payment arrangements regarding his delinquent accounts.

Applicant lives at home with his parents. As of his June 2018 answer to interrogatories, his gross monthly income was \$2,692. After paying his deductions and monthly expenses (including \$980 in car expenses and \$600 child support obligation), Applicant has an \$11 monthly net remainder. He did not present evidence to show that he has a working budget or that he has participated in financial counseling.

Applicant presented no documentary evidence of any contacts with creditors, payments made, or payment agreements established concerning any of the SOR debts. He promised to address the SOR debts sometime in the near future.

### **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. The delinquent debts alleged in the SOR are established by the record evidence. He was unemployed between August 2007 and March 2010, and between October 2013 and October 2014. He has been fully employed with federal contractors since March 2010, except for the period between October 2013 and October 2014. 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.

I considered the seven financial considerations mitigating conditions under AG ¶ 20; however, only one is potentially applicable:

(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.

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).

The AG ¶ 20(b) financial considerations mitigating condition is not fully raised by the facts in this case and does not mitigate the security concerns. Applicant's financial problems started before 2015, and are ongoing and unresolved. Applicant's evidence is insufficient to establish that circumstances beyond his control contributed to his financial problems. Even if they were, he failed to establish that he has been financially responsible under the circumstances. He did not present sufficient evidence of good-faith efforts to pay his debts; that he has been in contact with his creditors, of any

payments made since he acquired the debts, of any payment agreements, disputed debts, or of efforts to otherwise resolve his delinquencies.

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, 30, has been employed with federal contractors since 2010, except for a one-year period between October 2013 and October 2014. This is his first SCA. 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.

### **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.g:	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 grant Applicant eligibility for a security clearance. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge