



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



In the matter of:)
)
) ISCR Case No. 19-01228
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2019

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems resulted from circumstances beyond his control. He disclosed his financial problems in his security clearance application and started the process to resolve his delinquent accounts before he received the Statement of Reasons (SOR). He has some work to do to completely resolve his financial problems, but he has acted responsibly under his circumstances. He mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 23, 2018. He was interviewed by a government investigator on October 3, 2018. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued an SOR on May 9, 2019, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on June 12, 2019, 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 August 15, 2019. Applicant received the FORM on August 20, 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 September 10, 2019. He submitted a one-page statement, documents addressing a delinquent account, and documents showing he retained the services of a national debt relief (NDR) company to resolve his financial problems (eight pages total). He raised no objections to the Government's proffered evidence. The case was assigned to me on October 22, 2019. Without objections, I admitted and considered the Government's and Applicant's proposed evidence.

Findings of Fact

In his SOR answer, Applicant admitted five of the financial allegations (SOR ¶¶ 1.a through 1.e). He denied the last allegation - SOR ¶ 1.f. 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 44 years old. He graduated from high school in 1993. Shortly thereafter, he enlisted in the U.S. Air Force where he honorably served until he retired in 2013. He possessed a security clearance during most of his service. Applicant has been in a close relationship with a woman (he called the relationship a civil marriage) since 2000. He has no children.

Following his retirement, Applicant worked as a truck driver for companies or as an independent contractor. He was unemployed during two periods: the first, between May and September 2017, and the second, between February and May 2018. Applicant's sponsor, a federal contractor, hired him in May 2018. He has worked for his employer since May 2018.

In response to Section 26 (Financial Record) of his May 2018 SCA, Applicant disclosed that he had financial problems and revealed most of the SOR accounts. Applicant explained that his financial problems resulted from a failed cargo/transportation business. He purchased two trucks for his business. When the larger truck broke, he did not have the money to pay for the repairs, and it was repossessed. Ultimately, his business failed. When his business collapsed in 2017, Applicant had difficulty finding employment and his income was insufficient to pay for his living expenses and accumulated debts.

In May 2018, Applicant sought help and hired the services of an NDR to resolve his delinquent accounts. He included all six SOR accounts on his NDR resolution plan. He told the investigator that he had two other delinquent credit cards that he was repaying outside of the NDR program. Applicant promised to pay all of his delinquent accounts.

Although Applicant contacted NDR in May 2018, his participation in the debt resolution plan did not start until February 2019. He stated that because of his periods

of unemployment, he did not have the money to start making payments into the plan earlier. Applicant's documentary evidence shows that between February and August 2019 he made six payments for a total of \$5,200. The documents further show that NDR resolved one of the accounts and its payment is pending. I find Applicant has established a good-faith effort to resolve five of his delinquent debts (SOR ¶¶ 1.a through 1.e).

Concerning SOR ¶ 1.f, Applicant's evidence show that the creditor cancelled the debt in October 2018, and issued him an IRS Form 1099-C (showing the debt cancellation). Applicant stated that he declared the debt cancellation as income when he filed his tax returns.

In his answer to the FORM, Applicant disclosed another delinquent account that was not alleged in the SOR. He submitted documentary evidence showing that he contacted the creditor, settled the account, and started making \$50 payments on his debt payment plan.

Applicant's credit reports show that he appears to be living within his financial means, and has acquired no new debt or additional delinquent accounts. Apparently, Applicant's current job allows him to meet his financial obligations and living expenses.

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. After he retired from the service, he established a transportation business that failed in 2017, and he had two periods of unemployment. Because of his reduced earnings he had six accounts 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 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, 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 because of his failed business and periods of unemployment. His financial problems could be attributed to circumstances beyond his control.

In May 2018, Applicant started the process of retaining a debt resolution company to help him resolve his charged-off accounts. Because of his reduced income, he was not able to start contributing into the debt resolution program until February 2019. Between February and August 2019 he made six payments to the debt resolution program for a total of \$5,200. The company resolved one of accounts and payment is pending. I find Applicant has established a good-faith effort to resolve five of his delinquent debts. The sixth debt was cancelled by the creditor.

Applicant maintained his financial responsibility and has acquired no additional delinquencies. Although Applicant could have been more diligent addressing his charged-off accounts, 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 being 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, 44, served on active duty and was honorably retired. He held a clearance while in the service. There is no evidence of any security concerns, except for those in the SOR. He has been employed with a federal contractor since May 2018.

Applicant's evidence is sufficient to establish that circumstances beyond his control contributed to or aggravated his financial problems. After that, he has been financially responsible addressing his delinquent account within his financial means. He has established a viable plan to resolve 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.f:	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 grant Applicant's eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge