



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



In the matter of:)
)
) ISCR Case No. 18-02270
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*
02/06/2020

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems resulted, in part, from circumstances beyond his control. I find that he acted responsibly under the circumstances. The financial considerations security concerns are mitigated. Clearance is granted.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on February 16, 2017, seeking to continue a clearance required for his position with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on October 4, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on October 24, 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 on January 9, 2019, and reassigned it to me on September 12, 2019. DOHA issued a notice of hearing on September 18, 2019, setting the hearing for October 10, 2019. At the hearing, the Government offered eight exhibits (GE 1 through 8). Applicant testified and submitted 15 exhibits (AE 1 through 15). AE 13 through 15 were received post-hearing. All exhibits

were admitted without objection. Hearing exhibit (HE) 1 is the Government's discovery letter that I marked and made part of the record. DOHA received the hearing transcript (Tr.) on October 21, 2019.

Findings of Fact

The SOR alleges that Applicant filed for Chapter 7 bankruptcy protection in July 2008, and his nonpriority unsecured debts were discharged totaling about \$216,000 (mostly in credit card debts) in October 2008, and that he subsequently acquired two delinquent accounts that were charged off (¶¶ 1.a, owing \$36,364, and 1.b, owing \$26,858), totaling \$64,222. Applicant admitted all of the SOR allegations and submitted comments in mitigation. His SOR admissions, and those at the 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 a 55-year-old employee of a federal contractor. He is a 1984 high school graduate. He last attended college around 1995, and has completed about two years of college courses, but they are insufficient for a college degree. Applicant married in 2001. He and his wife have three children and eight grandchildren.

Applicant served honorably in the U.S. Air Force between 1985 and October 1988. After his discharge, he joined the National Guard where he apparently served two years. He possessed a secret clearance while on active duty that was continued into his National Guard service, and then, it was continued when he started to work for federal contractors to present. He believes that his clearance was upgraded to top secret in about 2017. (Tr. 9)

Applicant's work history indicates he worked for a private company between March 2001 and March 2002. He was laid off in March 2002 and was unemployed until March 2003. He worked for private companies between March 2003 and January 2008. He worked as a recruiter specialist for a military service between January 2008 and November 2008. He was unemployed, in between contracts, between November 2008 and January 2009. A federal contractor hired him as an information technology (IT) specialist between January 2009 and October 2010. He was unemployed for about five months between October 2010 and February 2011.

Applicant worked for two federal contractors between February 2011 and September 2012, and was deployed as a field engineer in support of U.S. personnel in the Middle East. He was unemployed between September 2012 and January 2013. Apparently, he took a break on his employment after he returned from an overseas tour to study for certifications required for his employment. (GE 4) He worked for federal contractors in the United States and was deployed to the Middle East twice between November 2014 and March 2016, and then from August 2016 to December 2016. (Tr. 58-60) He was hired as a senior field technician by his current employer and clearance sponsor, a federal contractor, in January 2017. He is currently deployed to Europe.

Concerning his financial problems, Applicant credibly explained that he was a victim of the 2007 – 2008 financial crisis. He and his wife purchased their primary residence in 2002 - 2003. Before the 2007 - 2008 financial crisis, he purchased three investment properties, fixed them, and sold them for a profit of about \$270,000. He used the profit to purchase a five-acre property with a plan to build a home for himself and his aging in-laws.

Applicant secured a \$490,000 construction loan from a mortgage company and started building his home. In mid-2007, the construction of the house was half complete when the mortgage company declared bankruptcy. He tried to obtain another construction loan, but was unsuccessful. He used his credit cards in an attempt to finish the construction of the house, but failed. Applicant had to short-sell the five-acre property and took a financial loss. Applicant had the foresight to never mortgage his primary residence as collateral for the new construction and was able to keep it after the bankruptcy discharge. (Tr. 31-39; AE 6 provides some evidence of profit from the sale of one property.)

Concerning SOR ¶ 1.a, Applicant explained that he purchased a \$35,000 motorhome in December 2016, after coming back from a deployment to Afghanistan. He believed that the purchase would allow him to spend more time with his wife while in the United States. He was scheduled to attend training in two different states for long periods, and was scheduled to deploy again after the completion of his training. Applicant planned on living in the motorhome with his family, and to sell his home ahead of his upcoming deployment. However, his wife is a postal worker employee who is receiving worker's compensation since 1999. She was concerned about losing her long-time doctor and refused to move or travel with Applicant. He attempted to sell the motorhome without success, and when he could no longer afford the payments, he voluntarily returned the motorhome to the lender.

Applicant's documentary evidence shows that he made payments on the motorhome note between December 2016 and December 2017. He contacted the creditor in March 2018, and attempted to set up a payment plan. The manager of the credit union indicated that he would agree to a payment plan provided Applicant's credit card balance was below \$5,000. At that time, Applicant's credit card balance was about \$13 - 14,000, because of expenses required for repairs to his primary home resulting from a leaking roof and mold issues. It took Applicant until October 2019 to lower the balance on the credit card to about \$3,000.

In September 2019, the credit union offered Applicant several payment options. In December 2019, consistent with the offer, Applicant established a \$374 monthly electronic payment to resolve this debt. (AE 13)

Concerning SOR ¶ 1.b, Applicant explained that he opened a bank account in November 2015 for a long-time friend, and gave his friend access to two credit-card accounts because he was pending a divorce and needed financial assistance. Applicant believed his friend would repay any charges he made in the accounts. During two years,

Applicant provided financial support to his friend, who overcharged the account alleged in SOR ¶ 1.b. In a sworn statement, the friend admitted the account was his debt. He has continued to promise to repay the debt, but he does not have the financial means to repay it. (AE 5; Tr. 40-46)

Appellant made three payments on this account after it was closed by the credit union, and he contacted the credit union personnel three times hoping they would open the account and let him make payments, but to no avail. If the creditors agree, Applicant intends to pay the charged-off accounts one at a time.

Applicant expressed remorse for his financial situation. He claimed that he has learned a hard lesson and promised to be financially responsible in the future. He believes that his overall financial situation is good. He is never late on his mortgage payments, and his earnings are sufficient for him to pay his living expenses and current debts. Applicant believes he is doing the best he can do in his current circumstances. He is concerned about not getting his clearance, losing his job, and having to repay his employer for his current relocation expenses to Europe that are close to \$100,000.

Applicant's 2018 credit report (GE 8) shows a total of 31 "trades" with 29 trades in good standing. The only derogatory trades concern the accounts alleged in SOR ¶¶ 1.a and 1.b.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. The case will be adjudicated under 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 AG 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 for 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 history of financial problems is documented in the record. His nonpriority unsecured debts were discharged in 2008, following a Chapter 7 bankruptcy proceeding. Following the bankruptcy discharge, he acquired two delinquent accounts that were charged off. AG ¶ 19 provides disqualifying conditions that 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 the disqualifying

conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Four mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013), the Appeal Board concisely explained 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).

Considering the evidence as a whole, I find that some of the mitigating conditions are sufficiently established by the evidence and are applicable. AG ¶ 20(a) partially applies because Applicant's financial problems are recent and ongoing. However, I believe that the circumstances are unlikely to recur, and they do not cast doubt on Applicant's current reliability, trustworthiness, and judgment.

Applicant established circumstances beyond his control that contributed to or aggravated his financial situation, such as the 2007-2008 financial crisis, his overseas deployments, his short periods of unemployment, and his misplaced reliance on his long-time friend. He presented some evidence of reasonable efforts to pay, settle, or otherwise resolve his delinquent accounts before he was served with the SOR in October 2018. I find that he was financially responsible under the circumstances.

Concerning SOR ¶ 1.a, Applicant's purchase of the motorhome was reasonable in light of his circumstances. He made payments for a year and tried to sell the motorhome when his wife refused to travel with him because of her own health problems. Applicant attempted to enter into a payment agreement with the creditor. In September 2019, the credit union offered Applicant several payment options. In December 2019, Applicant established a \$374 monthly electronic payment to resolve this debt.

Concerning SOR ¶ 1.b, Applicant's opening two credit accounts and a bank account for a friend in financial need. Although commendable from a humanitarian perspective, his actions were unreasonable and show lack of judgment. Notwithstanding, Applicant was trying to help a long-time friend and he mistakenly anticipated that his friend would repay the charges.

Applicant credibly stated his desire and intent to pay his delinquent debts. He first reduced a high balance credit card to then address the two SOR delinquent debts. He started payments on the account alleged in SOR ¶ 1.a in December 2019. I anticipate he will also address and pay the debt alleged in SOR ¶ 1.b in the near future. Applicant should have been more diligent addressing his debts. Notwithstanding, I find his recent efforts, when considered in light of the evidence as a whole, sufficient to mitigate the financial security concerns. In particular, I note that Applicant's credit reports do not reflect a history of financial problems relating to any additional delinquent accounts. Except for the accounts alleged in the SOR, they reflect a history of financial responsibility.

Considering the evidence as a whole, I find that Applicant's financial situation is stable and that his financial problems are under control. He established a good-faith effort to resolve his debts. I believe that given time, he will continue to resolve his two outstanding debts. 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, 55, has about five years of active and National Guard service in the Air Force and has been working for federal contractors since 2008. He held a clearance while in the service that has been continued to present without incidents or concerns, except for those in the SOR. He has volunteered for deployments to the Middle East three times in support of U.S. interests in dangerous environments. Some of his financial problems arose while he was deployed. He receives some mitigating credit because of the difficulties he likely faced attempting to resolve his financial problems from abroad.

Applicant should have been more responsible addressing his delinquent financial obligation. Notwithstanding, considering the evidence as a whole, he has demonstrated good judgment and reliability. The evidence from his credit reports showing numerous accounts that are current or paid is sufficient to establish a track record of financial responsibility. He recently established a payment plan for the debt alleged in SOR ¶ 1.a. I believe that given additional time, Applicant will resolve his remaining financial obligations. He is fully aware of the security concerns raised by his failure to maintain financial responsibility. He promised to maintain financial responsibility to ensure that he continues to be eligible for a clearance. He understands that if he fails to honor his financial obligations his clearance eligibility will be denied. The financial considerations security concerns are mitigated.

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.c:	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