



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



In the matter of:)
)
) ISCR Case No. 19-03781
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2021

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 May 7, 2019. He was interviewed by a government investigator on July 24, 2019. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) on March 20, 2020, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on September 1, 2020, 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 October 26, 2020. Applicant received the FORM on December 7, 2020. 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 March 18, 2021.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of his interview with a government background investigator on July 24, 2019. (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 answered the SOR with a one-paragraph statement, admitted all of the SOR allegations, and requested a decision based on the record. He failed to answer the FORM and raised no objections to the FORM or to me considering the unauthenticated summary of his July 2019 interview. Without objections, I admitted and considered all of the FORM's proffered evidence.

Findings of Fact

In his answer to the SOR, Applicant admitted the 11 financial allegations, totaling about \$47,480 (¶¶ 1.a through 1.k), all of which are established by the record evidence. 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 a 39-year-old employee of a Federal contractor. He married in September 2006 and separated in May 2018. He disclosed having no children in his answers to his 2019 SCA; however, he indicated having two children (a daughter 12, and a son eight) in his 2016 Chapter 7 bankruptcy filing (Schedule J of Form B 6J). (Item 7) In his 2019 SCA, Applicant stated that he earned a master's degree in December 2013. He failed to indicate when he completed high school or his undergraduate degree.

Applicant started working for his current employer and clearance sponsor, in September 2017. According to his 2019 SCA, he has been fully employed, and without periods of unemployment, since 2017. This is his first SCA. Applicant's work history starts in December 2006 when he worked for a bank until July 2016. He was unemployed between July 2016 and February 2017. He worked for a large company between February 2017 and September 2017, just before he was hired by his current employer.

In response to Section 26 (Financial Record) of his 2019 SCA, Applicant disclosed he had financial problems that led to his filing for Chapter 7 bankruptcy in

October 2015, with a subsequent discharge of his dischargeable debts in March 2016. He stated: "Filed bankruptcy due to many debts such as payday loans and not enough income at the time to pay my debts off." (Item 3, Section 26, Financial Record.) Applicant failed to disclose any additional delinquent accounts.

The subsequent background investigation addressed his financial situation and revealed the delinquent accounts alleged in the SOR. During his July 2019 interview with a government investigator, Applicant discussed his delinquent accounts, and that he and his spouse filed for Chapter 7 bankruptcy in 2015. He explained that they began to have financial difficulties in 2012, when they started to overspend and take out payday loans to pay their bills. He told the investigator that the interest on the payday loans were so high (200 percent monthly interest or higher), that he could not afford to pay them. Applicant noted that his wife was not working at the time, and he was the only provider. He implied that his income was insufficient to meet their living expenses and pay their debts. (Item 4).

Applicant told the investigator that he and his wife were separated pending divorce. At the time of the interview, he was living with his parents to save money. He noted that the accounts he discussed with the investigator were not covered in the bankruptcy discharge. With the exception of SOR ¶¶ 1.i (\$822) and 1.k (\$242), all of the accounts alleged in the SOR were opened after his Chapter 7 discharge. Applicant estimated that he was discharged of about \$20,000 in debts. Most of the debts reported in the credit bureau reports involved student loans. His October 2019 credit bureau report shows \$152,831 in deferred student loans assigned to the U.S. Government currently in deferment. (Items 6, 7)

During his 2019 interview, Applicant promised the investigator that he would contact his creditors and make arrangements to pay his delinquent debts. He noted that he was making a good salary with his employer, implying that he would be able to pay the debts. He had made no payments on any of his delinquent accounts up to the day of the interview. Applicant presented no documentary evidence of any efforts to settle, pay, or otherwise resolve any of the SOR debts. These debts are unresolved.

In his answer to the SOR, Applicant stated that he had taken steps to improve his credit. He noted that he had two new credit card accounts that he was paying on time, and that he just purchased a new car in 2020. He stated "I still have plan to pay off my debt that I do owe." (SOR answer.) Presumably, he obtained the new credit cards and purchased the car with a view of rebuilding his credit.

Applicant did not present evidence of his current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). He did not present evidence to show that he has a working budget. There is no evidence to show Applicant has had recent financial counseling, except for the counseling he received during his bankruptcy filing.

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 his admissions and the record evidence. 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 established by the facts in this case and does not mitigate the security concerns. Applicant’s financial problems started in about 2012, before he filed for Chapter 7 bankruptcy in 2015. After his 2016 bankruptcy discharge, he acquired the delinquent accounts alleged in the SOR, totaling about \$47,480, all of which are still ongoing and unresolved. Applicant’s evidence is somewhat sufficient to establish that circumstances beyond his control contributed to his financial problems, i.e., his period of unemployment and his separation from his wife.

Notwithstanding, Applicant’s evidence is insufficient to establish that he has been financially responsible under the circumstances. There is no evidence to show that he is following a budget or received recent financial counseling. Applicant submitted no evidence of good-faith efforts to resolve his debts before he submitted his 2019 SCA; after he was interviewed by a Government investigator about his delinquencies in 2019; after he received the 2020 SOR; or after he received the FORM. AG ¶ 20(d) is not applicable.

Applicant failed to submit documentary evidence of his current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder) to show his ability to be financially responsible. Considering the evidence as a whole, Applicant’s evidence is insufficient to demonstrate his financial responsibility, that his financial problems are being resolved, and that he has the financial ability to pay his debts. The financial considerations security concerns are not mitigated.

The SOR alleged 12 accounts creating financial considerations concerns. Filing for bankruptcy is a legal recourse to resolve financial distress. SOR ¶ 1.I is resolved for Applicant.

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, 39, has been fully employed with a Federal contractor since 2017. 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.

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.k:	Against Applicant
Subparagraph 1.l:	For 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.

JUAN J. RIVERA
Administrative Judge