



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



In the matter of:)
)
) ISCR Case No. 20-01720
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: Troy Nussbaum, Esq.

08/23/2021

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is sufficient to demonstrate recent financial responsibility. Past alcohol abuse led him to acquiring the delinquent debts alleged in the Statement of Reasons (SOR). He has been sober and has acquired no delinquencies since 2014. He recently settled and paid all of the SOR debts. He was candid and forthcoming in his 2019 security clearance application and during the clearance process. He is in control of his finances and has the means to maintain his financial responsibility. The financial considerations security concerns are mitigated. Clearance is granted.

Statement of the Case

Applicant submitted his first security clearance application (SCA) on June 27, 2019. He was interviewed by a government investigator on September 17, 2019. (The summary of the personal subject interview (PSI) was not admitted into evidence.) After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued an SOR on October 30, 2020, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on December 17, 2020, and

requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on April 7, 2021. With Applicant's consent, DOHA issued a notice for a video teleconference hearing (via the Defense Collaboration System (DCS)), on May 7, 2021, setting the hearing for May 18, 2021. I convened the hearing as scheduled. The Government offered five exhibits (GE 1 through 5). GE 5 was admitted post-hearing. It is an IRS Form 1099-C concerning one of the accounts disclosed by Applicant in his 2019 SCA, but not alleged in the SOR. Applicant gave the form to the Government after his interview.

Applicant submitted exhibits (AE) A through H with his answer to the SOR. Before the hearing, Applicant electronically submitted AE I through M. All exhibits were admitted without objection. Applicant testified as reflected in a hearing transcript (Tr.) received by DOHA on May 28, 2021.

Procedural Issues

Applicant objected to the admissibility of a GE 4, a summary of his September 17, 2019, PSI with a government investigator, for lacking authentication. I sustained the objection IAW Para. E3.1.20. of Directive 5220.6. GE 4 was marked and made part of the record, but was not admitted or considered as evidence. (Tr. 8)

At the end of the hearing, Department Counsel moved to amend the SOR by adding an additional financial allegation concerning one of the delinquent accounts Applicant disclosed in his 2019 SCA. This was not new information or evidence admitted during the hearing. The Government had the information concerning the delinquent account in its possession since Applicant submitted his 2019 SCA. Applicant did not receive 15 days of notice that the allegation would be used for disqualifying reasons. To avoid unnecessary delays, I exercised my discretion and denied the Government's motion. (Tr. 68 – 72)

Findings of Fact

In his answer to the SOR, Applicant admitted (with comments and explanations) the financial allegations in ¶¶ 1.a through 1.c (owing one creditor for three accounts in collection for \$22,226 (SOR ¶ 1.a); \$3,941 (SOR ¶ 1.b); and \$7,240 (SOR ¶ 1.c). His SOR admissions and those at his 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 36 years old. He graduated from high school in 2001, and received a bachelor's degree in 2007. He has never been married and has no children. This is his first security clearance application.

Applicant's work history in his 2019 SCA indicates he worked as a pizza delivery driver between June 2008 and November 2011. He then worked in different positions for a home inspection company between 2009 and 2018. He started working as a materials handler for his current employer and clearance sponsor, a federal contractor, in December 2018. He also continued working for the home inspection company on a part-time basis.

Applicant makes between \$65,000 and \$70,000 a year. About \$10,000 a year comes from his part-time job, and \$55,000 to \$60,000 a year comes from his position with a federal contractor. (Tr. 62-63) After deductions, his net salary or take-home pay is about \$2,318. His expenses, including groceries, utilities, car and medical, and miscellaneous expenses amount to about \$1,467. His mortgage is \$642 a month. Applicant believes that he is currently financially stable. His income allows him to pay his living expenses and debts. (Tr. 38-41)

In response to Section 26 (Financial Record) of his 2019 SCA, Applicant disclosed the three accounts alleged in the SOR and two additional accounts that were not alleged. One was a credit card account for \$3,160 that he failed to pay. The creditor issued him an IRS Form 1099-C, cancellation of debt, and he reported it in his 2014 income tax return. The second account was for a 2013 loan for \$7,000 to install windows in his house that became delinquent for lack of payments. Applicant averred he believe the debt was also cancelled because it indicated a "0" balance in his credit report, and the creditor did not attempt to collect.

Applicant testified that before he received the SOR, he retained the services of a credit-repair company seeking assistance to resolve his delinquent accounts. The credit-repair company advised him not to repay the three delinquent accounts alleged in the SOR and the \$7,000 loan, because they were beyond the statute of limitations and uncollectable by legal means. Applicant followed the credit-repair company's advice and ignored his delinquent debts. After receiving the SOR, Applicant realized he was given bad advice for purposes of receiving access to classified information. He hired an attorney to help him negotiate settlements with his creditors and to address the SOR concerns.

Applicant testified that his financial problems were caused by his alcohol abuse between 2002 and 2014. He was drinking too much alcohol too often. He was hungover most mornings and could not accomplish his goals at work. Because he was drinking too often, he was spending beyond his financial means and accumulated large amounts of credit card debt. His utilities were shut off for nonpayment, and all of his credit cards were closed for being delinquent. (GE 1, Section 24 (Alcohol))

In 2014, after his second driving-while-intoxicated conviction, Applicant stopped consuming alcohol. He successfully attended alcohol counseling between 2014 and 2018. During the same period, he also attended Alcoholics Anonymous (AA) meetings. He has continued to attend AA meetings to present. As part of the AA program, he has a sponsor with whom he maintains contact, and they follow the 12 step rehabilitation

process. During the pandemic, his AA attendance has been reduced to two times a month, but he believes participating in AA has been helpful to him, and he would like to increase his attendance. Applicant credibly testified that he has been abstinent since 2014.

In November 2020, Applicant contacted the creditor holding the three accounts alleged in the SOR. The bank agreed to settle the accounts for less than owed: the \$22,226 account was settled for \$7,800; the \$3,941 account was settled for \$1,400; and the \$7,240 account was settled for \$2,555. In April 2021, Applicant paid in full all the settled accounts. (AE A – D, and I – L) With his grandfather's financial help (a gift of about \$100,000) and by refinancing the home he inherited from his parents, Applicant was able to resolve his delinquent debt, except for a \$7,000 debt not alleged in the SOR.

Applicant participated in a financial counseling course in December 2020, and testified he is following a budget. He noted that he has not acquired any additional delinquent debts since 2014. He believes that all of his financial problems were caused by his alcohol abuse. He has learned a hard lesson as a result of his financial problems and the clearance process. He now knows that he has to maintain financial responsibility to be eligible for a clearance and to retain his job. He promised to maintain financial responsibility in the future. He believes that as long as he maintains his sobriety, he will be able to maintain his financial responsibility and will not be a security risk.

Applicant submitted numerous reference letters from his direct manager, colleagues, friends, and family members. His references lauded his work ethic, personality, and ability to work under pressure. He is considered to be an asset to his company, and he is professional, trustworthy, dependable, and committed to doing a good job. His references endorsed his eligibility for a clearance.

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 Security Executive Agent Directive (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. [First time SEAD used]

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

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant's financial problems are documented in the record. He defaulted on the three credit-card accounts alleged in the SOR, and they were in collection. He also defaulted on a \$7,000 loan not alleged in the SOR. Because it was not alleged, I will only consider the defaulted loan for the limited purpose of evaluating Applicant's evidence in mitigation and for the whole-person concept.

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.

The DOHA 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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 19(a) is partially applicable because Applicant acquired the delinquent debts alleged in the SOR before 2014, and he has not acquired any additional delinquent debts after 2014. However, he just settled and paid the three accounts alleged in the SOR, and he still has one defaulted loan that he failed to pay. Thus, the financial problems are recent.

AG ¶ 19(b) is not supported by the facts in this case and it is not applicable.

AG ¶¶ 19(c) and (d) are applicable. Applicant sought financial assistance from a credit-repair company before he received the SOR. However, he was provided with bad advice about the appropriateness of utilization of the statute of limitations to avoid payment of delinquent debts that remain relevant for security clearance purposes. After receipt of the SOR and realizing that the credit-repair company advice was wrong, Applicant retained an attorney that helped him to settle and pay his delinquent accounts. Additionally, he participated in financial counseling. Applicant's evidence establishes that he has resolved the three accounts alleged in the SOR and his finances are under control.

I considered that Applicant did not address his delinquent accounts until after he received the SOR. However, he credibly testified that he did not realize the credit-repair company's advice was wrong until he received the SOR and his attorney explained to him the adverse effects of being financially irresponsible on a clearance eligibility determination. I also considered that Applicant has not had any additional delinquent accounts since 2014, and that he was candid and forthcoming during the clearance process.

Considering the record as a whole, I find that Applicant acted responsibly under the circumstances and that he made a recent good-faith effort to pay his delinquent debts. His past financial behavior does not cast doubt on his current reliability, trustworthiness, and good judgment.

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. SEAD 4, App. A, ¶¶ 2(a) and 2(d). Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant, 36, has worked for a federal contractor since December 2018. This is his first clearance application. Applicant has been sober, and has acquired no delinquent debts since 2014. He was lauded by his supervisors and colleagues for his job performance, professionalism, trustworthiness, and dependability. I believe that Applicant will maintain his financial responsibility in the future. 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 grant Applicant’s eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge