



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



In the matter of:)
)
) ISCR Case No. 20-03150
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2021

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems resulted from circumstances beyond his control. He started the process to resolve his delinquent accounts before he received the Statement of Reasons (SOR). He acted responsibly under his circumstances and has resolved his financial problems. Financial considerations security concerns are mitigated. Clearance is granted.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on April 16, 2019, seeking the continuation of his clearance eligibility. He answered a set of interrogatories from the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) on December 16, 2019. After reviewing the information gathered during the background investigation, the DOD CAF issued Applicant an SOR on January 28, 2021, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on February 15, 2021, provided material to extenuate or mitigate the security concerns, 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. He responded to the FORM on July 7, 2021, and submitted evidence in extenuation and mitigation and of his efforts to resolve his financial problems. He raised no objections to the Government's proffered evidence. The case was assigned to me on August 30, 2021. Without objections, I admitted and considered the Government's proposed evidence and Applicant's documentary evidence.

Findings of Fact

The SOR alleges nine delinquent accounts, two in collection and seven charged-off accounts, totaling over \$78,000. In his answer to the SOR, Applicant admitted all of the SOR financial allegations (SOR ¶¶ 1.a through 1.i), and submitted extenuating and mitigating documentary 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 66 years old. He completed his bachelor's degree in 1977. He was commissioned in the U.S. Army in 1978 and served honorably on active duty until his discharge in 1985. He then joined the Inactive Reserve where he served until his honorable discharge in 1997. He possessed a security clearance during his military service. Applicant has been married to his wife since 1993. He previously married in 1982 and divorced in 1992. He has two children and two stepchildren all of whom are adults.

Applicant has been working for his current employer and security sponsor, a large federal contractor, since June 2009. He is senior principle supplier engineer. He has held access to classified information at the secret level during all of his employment. He is considered to be a highly valuable and trustworthy employee. His performance ratings show he has been rated as "exceeding requirements", as an "exceptional contributor", and as a "highly effective contributor."

In response to Section 26 (Financial Record) of his April 2019 SCA, Applicant disclosed that he was experiencing financial problems. He explained that his wife's earnings were \$2,000 a month until she was laid off in early 2018 and was unemployed until late 2018. (Answer to the FORM) While she was unemployed, and later on after she found a job at a reduced salary (\$1,300 per month as of December 2019), he overextended himself financially by using credit cards to pay for two mortgages and living expenses. Applicant and his wife own two homes, one purchased in 2009, and the second in 2014. The first residence they use during the work week to minimize the commuting distance between his home and his work location. The second home they purchased in 2014 as a retirement home, and they use it during weekends, holidays, and vacations.

In November 2018, Applicant realized his income alone, without his wife's earnings, was insufficient to pay their debts and living expenses. He did not know if or when his wife would find employment. Concerned about his ability to pay debts and to avoid losing his homes, Applicant retained the services of a debt-resolution company to help him negotiate and resolve his delinquent accounts. At the time that he retained the debt-resolution company, none of his accounts were placed for collection or charged off. Applicant's November 2018 debt resolution agreement shows that he enrolled 10 accounts, including all of the accounts alleged in the SOR, totaling close to \$90,000. (FORM, Item 5) Shortly thereafter, he started making monthly deposits of \$1,342 to the debt-resolution company to be used to settle and pay his debts.

Attached to his answer to the SOR, Applicant submitted documentary evidence showing that the debt-resolution company settled (for less than what he owed) six of the accounts alleged in the SOR (§§ 1.b, 1.d through 1.f, 1.h, and 1.i). Additionally, attached to his answer to the FORM, Applicant submitted documentary evidence showing that the debt-resolution company settled (for less than what he owed) two of the remaining accounts alleged in the SOR (§§ 1.c and 1.g). The only account that has not been settled or resolved is SOR § 1.a. Applicant stated, and the documents submitted indicate, that this account is scheduled to be settled sometime in November 2021. Because he already settled eight delinquent accounts, I find it is likely that he will settle and resolve the remaining delinquent account.

As of December 2019, Applicant and his wife were earning a monthly net salary of about \$11,746. According to their budget, his wife was netting \$1,300 per month and they had a monthly remainder of about \$1,570, after paying their debts and living expenses. Applicant noted that their financial problem was a onetime occurrence and after taking corrective action through the debt-resolution company, they are now back on a secure financial footing. He indicated that his financial situation is stable. He stated that they have made the necessary adjustments to their lifestyle to assure they will not face similar financial problems in the future.

Applicant's credit reports show that he is living within his financial means, and that he has acquired no additional delinquent accounts. Although Applicant presented no evidence to show he has received financial counseling, he retained the services of a debt resolution company to help him resolve his financial problems, and has been paying his delinquent accounts. There is no record evidence showing that Applicant had financial problems in the past.

Applicant highlighted his over 40 years of service to the United States, first through his honorable military service, and since 2009, as an employee of a large federal contractor. He believes that he has been an exemplary employee, ensuring the security of all information and equipment entrusted to him both in the military service and as a contractor employee. His performance appraisals confirm that he is considered to be a valuable and trustworthy employee. He was rated as "exceeding requirements", as an "exceptional contributor", and as a "highly effective contributor." (FORM answer)

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. His wife was laid off in early 2018, and when she found employment it was for a lower salary. Because of the reduced earnings, he was concerned about his ability to pay debts, living expenses, and two mortgages. In November 2018, he retained the services of a debt-resolution company that advised him to let the accounts become delinquent. He subsequently acquired the nine delinquent accounts alleged in the SOR. 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 these mitigating conditions are partially or fully supported by the facts in this case. Applicant developed financial problems after his wife was laid off and their earnings were reduced. His income alone was insufficient to pay the two mortgages, accrued debts, and living expenses. Thus, I find that his financial problems could be attributed to, or were aggravated by, circumstances beyond his control.

I do not believe Applicant acted improperly or was financially negligent by owning two homes. He was financially capable of paying the two mortgages from 2014 until his wife was laid off in early 2018. It was not until after his wife was laid off that his income became insufficient to pay their accrued debts and his financial problems started. Applicant was financially diligent by retaining the debt resolution company before his debts became delinquent or were charged off. I find that he has been financially responsible under his circumstances.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to resolve financial issues in the future, without further confirmed action, are insufficient.

In this instance, there is no evidence of prior financial problems. Circumstances beyond his control contributed to his financial problems. He started to resolve his delinquent accounts before the SOR was issued. He settled and resolved eight of the nine delinquent SOR accounts and acquired no additional delinquencies. His actions are sufficient to demonstrate his current financial responsibility, and that his financial problems are being resolved and are under control. Because he already settled and resolved eight delinquent accounts, I find it likely that he will resolve the remaining delinquent account. 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, 66, served on active duty as an officer for 8 years and 13 years in the Inactive Reserve. He was twice honorably discharged. He held a clearance while in the service. He has been employed with a federal contractor and has possessed a clearance since 2009. There is no evidence of any security concerns, except for those in the current SOR.

Applicant's evidence is sufficient to establish that circumstances beyond his control contributed to or aggravated his financial problems. He has been financially responsible addressing his delinquent accounts within his financial means. He established a viable plan to resolve the accounts alleged in the SOR. He resolved or paid 8 of the 9 SOR accounts. He is in control of his finances. Given the opportunity, I believe that Applicant will resolve or pay the remaining SOR account. Because of his service, experience possessing a security clearance, and the security clearance process, Applicant likely understands that he is required to maintain his financial responsibility to be considered eligible for a clearance.

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.i:	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