



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03375
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2021

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish that he has been financially responsible addressing his delinquent accounts. He failed to establish he has taken good-faith efforts to resolve his debts and that his financial situation is under control. Clearance is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on January 30, 2020, seeking clearance eligibility required for his employment with a federal contractor. This is his first SCA. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DOD CAF) issued Applicant an SOR on April 2, 2021, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on April 19, 2021 (two-page handwritten statement), and on May 12, 2021 (one-page typed statement). He submitted no documentary evidence to extenuate or mitigate the security concerns. He 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 on July 26, 2021. He responded to the FORM on August 23, 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 October 6, 2021. Without objections, I admitted and considered the Government's proposed evidence and Applicant's documentary evidence.

Findings of Fact

The SOR alleges 14 delinquent accounts including: a charged-off credit account for \$10,547 (SOR ¶ 1.a); seven federal student loans in collection, totaling around \$35,660 (SOR ¶¶ 1.b through 1.h); and six student loans in collection, totaling about \$55,510 (SOR ¶¶ 1.i through 1.n). In his answers to the SOR, Applicant admitted all of the SOR financial allegations (SOR ¶¶ 1.a through 1.n). 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 50 years old. He attended college between March 2007 and October 2012, when he earned his bachelor's degree. He has been in a civil marriage since January 2020. He previously married in 2000 and divorced in 2018. He has a 16-year-old daughter.

Applicant's employment history indicates he was employed as a communications technician between June 2007 and February 2017. After holding small jobs for short periods, he was unemployed between April 2017 and November 2017. He worked as a department manager between November 2017 and August 2018, and as a foreman between August 2018 and November 2018. He worked as a communications technician between November 2018 and January 2020. He has been working as an IT technician and engineering intern for his current employer and security sponsor, a federal contractor, since January 2020.

In his SOR responses, Applicant averred his U.S. Department of Education student loans were paid off by company "A," who was then collecting on the student loans. He presented no documentary evidence to corroborate his allegations. In his answer to the FORM, Applicant stated he consolidated all of his federal student loans (SOR ¶¶ 1.b through 1.h) into one loan with one payment, and entered into a rehabilitation program to run from September 2021 to June 2022. He submitted no documentary evidence to corroborate these claims.

Concerning his private student loans (SOR ¶¶ 1.i through 1.n) in collection by "A," Applicant claimed they were now being serviced and collected by company "N". He claimed he contacted "N" and asked for his options to start a repayment plan. He submitted no documentary evidence to corroborate these claims.

In response to Section 26 (Financial Record) of his January 2020 SCA, Applicant disclosed that he owed about \$99,000 in student loans. He stated that he got behind paying his student loans after he was laid off from a job (unemployed) and later on he only found jobs at a reduced salary (underemployed). He overextended himself financially by using credit cards to pay for living expenses. He did not pay his student loans because his income was insufficient to pay his living expenses and student loans. He claimed: "I am starting to get on a schedule of getting things paid off. I have auto withdrawals on many of the student loans and I am paying what I can on the charged off credit card." (2020 SCA, Section 26)

The February 2020 credit report (FORM, Item 5) shows SOR ¶ 1.a as a charged-off credit account for \$10,547. The March 2021 credit report (FORM, Item 4) shows the account with the same balance. Applicant submitted no documentary evidence to corroborate he has made any payments to this account.

When asked to provide the reasons for his financial problems, Applicant stated "money issues, job issues, as jobs changed money changed and I had to prioritize what money was going to what bill and some, if not most of [the student loans] could [not] get paid." When asked to provide the current status of his financial issues, Applicant stated: "I have become more stable now and I am able to pay more. I am getting reevaluated in April and I am going to make higher payments. I am on auto withdrawals right now on all the student loans and I am working on payment arrangements with the charged-off (account alleged in SOR ¶ 1.a)." He submitted no documentary evidence to corroborate he has made any payments on the charged-off credit card account.

In his response to the FORM, Applicant stated that after graduating from college, between 2014 and 2018, he was unable to find a job commensurate to his degree and had to work lower paying jobs. His spouse paid most of the bills at the time. He separated and divorced in 2018, and that resulted in his income dropping drastically. Without his ex-wife's financial help he was unable to pay his debts. He used the credit card account alleged in SOR ¶ 1.a to pay his living expenses. (Answer to SOR)

Applicant submitted documentary evidence showing that in October 2017, he settled, for less than owed, two of his student loans. The two student loans are not alleged in the SOR, but the 2021 credit report corroborates they were settled and paid after they were charged off. (FORM, Item 4)

Applicant presented no evidence to show he has participated in financial counseling or has a working budget. He did not present evidence of his and his wife's current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder).

Except for the alleged student loans and the charged-off account alleged in SOR ¶ 1.a, Applicant's 2021 credit report shows that he is living within his financial means, and that he has acquired no additional delinquent accounts. The 2021 credit report shows one current (pays as agreed) credit-card account with a balance of \$202 and a

scheduled payment of \$29; and nine other accounts (four revolving accounts, four installment accounts, and a mortgage), with no balance or payment due, with a status of “pays as agreed” and “paid and closed.” The credit report shows that he has been paying or addressing some of his delinquent accounts.

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. Between 2007 and 2012, he attended college and accumulated a large number of student loans. After college, he was unable to find a good paying job, and was underemployed for a period and unemployed between April and November 2017. He was divorced in 2018, and his earnings were reduced. Because of the reduced earnings, he was unable to pay his debts and living expenses.

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.

Applicant acquired a large debt financing his college education. He was unable to find a good paying job and had a period of unemployment in 2017. His then wife was helping him with his finances, but they divorced in 2018. His earnings were reduced and his income alone was insufficient to pay the accrued debts and living expenses. His financial problems could be attributed to, or were aggravated by, circumstances beyond his control (divorce, unemployment, and underemployment).

Notwithstanding, Applicant's evidence is insufficient to show he has been financially responsible under his circumstances. He failed to submit evidence of his contacts with his creditors or of any payments made since he acquired the student loans or other debts, except for the two student loans that he settled for less than owed. He failed to present documentary evidence of consolidation of his student loans, rehabilitation efforts, and current payment schedules. He failed to establish he has taken good-faith efforts to resolve his other delinquent debts and that his financial situation is under control.

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.

In this instance, the evidence is insufficient to demonstrate Applicant's current financial responsibility, and that his financial problems are being resolved and are under control. Mere promises to resolve financial issues in the future, without further confirmed actions, are insufficient. Additionally, he presented no evidence to show he has participated in financial counseling or has a working budget. He did not present evidence of his current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). The financial considerations security concerns are not 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, 50, has been employed with a federal contractor since January 2020. This is his first SCA. His evidence is insufficient to establish that he has been financially responsible addressing his delinquent accounts. He failed to establish he has taken good-faith efforts to resolve his debts and that his financial situation is under control.

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. See *Dorfmont*, 913 F. 2d at 1401. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. Financial considerations security concerns are not mitigated at this time.

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.n:	Against 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's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge