



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 21-00659 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: David F. Hayes, Esq., Department Counsel
 For Applicant: *Pro se*
 08/15/2022

Decision

RIVERA, Juan J., Administrative Judge:

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

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on June 2, 2020, seeking clearance eligibility required for his employment with a federal contractor. He was interviewed by a government background investigator on June 26, 2020. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on August 10, 2021, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on January 5, 2022, 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 on March 4, 2022. He received the FORM on March 20, 2022, and was given 30 days after receipt of the FORM to raise objections, to submit evidence in extenuation and mitigation, and of his efforts to resolve his financial problems. He did not submit an answer to the FORM. The case was assigned to me on May 13, 2022. Without objections, I admitted and considered the Government's proposed evidence and Applicant's response to the SOR.

Procedural Issues

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of his June 26, 2020, interview with a government background investigator. (FORM, Item 3) 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 did not respond to the FORM. Without objections, I admitted and considered all of the FORM's proffered evidence.

Findings of Fact

The SOR alleges Applicant has four accounts in collection against him (¶ 1.a, for \$617; ¶ 1.c, for \$524; ¶ 1.d, for \$1,040; and ¶ 1.f, for \$7,206), and four charged-off accounts (¶ 1.b, for \$312; ¶ 1.e, for \$546; ¶ 1.g, for \$1,957; and ¶ 1.h, for \$12,443), totaling \$24,645.

In his answers to the SOR, Applicant admitted all of the SOR allegations without comment. I note; however, that he disputed the account alleged in SOR ¶ 1.d, as indicated in the June 2020 credit report, but there is no resolution disclosed. (Item 4) Also, according to the July 2021 credit report (Item 5), he owes only \$6,255 for the account alleged in SOR ¶ 1.f. His admissions are hereby incorporated into my findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 28-year-old high school graduate. He served in the U.S. Navy on active duty between March 2014 and March 2018. He stated he received an honorable discharge after the completion of his service obligation. He attended a technology college between July 2019 and June 2020, but did not complete the program. He married in September 2014, and has a three-year-old daughter.

Applicant's employment history shows he was supported by his parents while in high school. He worked as a delivery driver between May and July 2013, and was unemployed between July 2013 and March 2014. After his discharge from the Navy, he was unemployed between March 2018 and October 2019. He was hired by a federal

contractor in October 2019, and by his current sponsor and employer, another federal contractor, in June 2020.

On his June 2020 SCA, Applicant indicated that he submitted a prior SCA on an unknown date while in the Navy, and was granted access to classified information at the secret level. In his responses to questions in Section 26 (Financial Record) of his 2020 SCA, Applicant disclosed having no financial problems, such as delinquent, in collection, or charged-off financial accounts. The subsequent background investigation revealed the delinquent accounts alleged in the SOR.

Applicant was interviewed by an OPM investigator on June 26, 2020. (Item 3) He was confronted with a number of delinquent financial accounts he failed to disclose in his 2020 SCA. He told the investigator that he did not disclose the accounts because he was not aware he was required to list accounts he had paid, was paying, or was in the process of settling. He also indicated he was unaware of some of the accounts, or that some accounts were delinquent or charged off. Applicant stated he had retained the services of the Lexington Law Firm to help him resolve some of his delinquent accounts.

The investigator asked Applicant to submit documentary evidence to corroborate his contract with the Lexington Law Firm, to document the accounts included in the contract, and about the status of the other delinquent accounts in the credit report. Following his interview, Applicant failed to submit any documentary evidence to corroborate his claims about retaining a company to help him. He did not provide any documentary evidence with his response to the SOR, and he failed to respond to the FORM.

All of the SOR allegations are established by the documents in evidence, including Applicant's SOR admission, his statement to an OPM investigator during his 2020 interview, and the credit reports in evidence. (FORM, Items 1, 3, 4, and 5)

Applicant failed to submit sufficient documentary evidence about his efforts to contact his creditors, of any payment agreements established, of any payments made to the creditors alleged in the SOR, or of having retained the services of a debt resolution company to assist him with his financial problems. The accounts alleged in the SOR are outstanding and unresolved. He 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 spouse's current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). Without any documentary evidence of his current financial situation, it is not possible for me to assess whether he is financially overextended.

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. As alleged in the SOR, he has three accounts in collection against him (¶ 1.a, for \$617; ¶ 1.c, for \$524; and ¶ 1.f, for \$6,255), and four charged-off accounts (¶ 1.b, for \$312; ¶ 1.e, for \$546; ¶ 1.g, for \$1,957; and ¶ 1.h, for \$12,443), totaling over \$23,000. He disputed the account alleged in SOR ¶ 1.d (\$1,040), as indicated in the June 2020 credit report. Although he presented no evidence to show the account was resolved in his favor, I gave him credit for attempting to resolve the account. As noted above, Applicant presented no documentary evidence of any good-faith efforts on his part to pay, settle, or resolve his delinquent debts.

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).

Applicant was unemployed for about a year before he enlisted in the Navy in 2014. After his 2018 discharge, he was unemployed between March 2018 and October 2019. He was hired by a federal contractor in October 2019, and presumably, he has been consistently employed to present.

Applicant's financial problems could be attributed to his periods of unemployment, his military discharge, the expenses associated with the birth of his daughter, and underemployment conditions for him or his wife. Notwithstanding, he failed to submit documentary evidence to corroborate his efforts to contact his creditors, of any payment agreements established, of any payments made, or of having retained the services of a debt resolution company to assist him with his financial problems. He presented no evidence to show he has participated in financial counseling. He did not present evidence of his and his spouse's current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). Without any documentary evidence of his current financial situation, it is not possible for me to assess whether or not he is financially overextended.

Applicant's evidence is insufficient to show he has been financially responsible under his circumstances. He failed to establish his good-faith efforts to resolve his delinquent accounts, 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. In this case, Applicant failed to submit sufficient documentary evidence of his efforts to resolve his financial problems. Additionally, he presented no evidence to show he has participated in financial counseling. He also 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, 28, has been working for his employer, a federal contractor since June 2020, whom has sponsored him for a clearance. His evidence is insufficient to establish that he has been financially responsible. He failed to establish he has taken good-faith efforts to resolve his financial problems.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.f: | Against Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraphs 1.e – 1.h: | 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