



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



In the matter of:)
)
) ISCR Case No. 22-00013
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, 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 February 14, 2020, seeking clearance eligibility required for his employment with a federal contractor. He was interviewed by government background investigators on July 17, 2020, and October 19, 2021, and answered a set of interrogatories on January 13, 2022. 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 February 24, 2022, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR the same day it was issued, 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 21, 2022. He received the FORM on March 31, 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 June 16, 2022.

Procedural Issues

In the FORM, Department Counsel advised Applicant that the FORM included unauthenticated summaries of his July 2020 and October 2021, interviews with government background investigators. (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 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 nine charged-off accounts (§§ 1.a through 1.f, and § 1.e through 1.j) totaling \$78,428, and one account in collection (§ 1.g, for \$617), all totaling over \$79,000. In his answers to the SOR, Applicant admitted all of the SOR allegations, and made comments concerning some accounts. 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 35-year-old high school graduate. He attended a technology college between 2006 and 2007, but did not complete the program. He served in the U.S. Army as an enlisted member on active duty between October 2009 and April 2016. He received an honorable discharge upon completion of his service obligation. He married in December 2011, and separated in November 2018. (Item 2) He has an eight-year-old son.

Applicant's employment history shows that since his discharge from the Army, he has been consistently employed with federal contractors. On his 2020 SCA, Applicant indicated that he submitted a prior SCA on an unknown date while in the Army, and he was granted access to classified information at the top-secret level in 2010. 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 July 6 and July 15, 2020. (Item 4) 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 some of the accounts because he had forgotten or was unaware of some of the accounts being delinquent. Other accounts he was not sure what they were for, or whether they were his accounts. He promised to investigate the accounts and make payment if they were his accounts. Concerning other accounts, he claimed he had established monthly payment plans with the creditors and was making payments.

The investigator asked Applicant to submit documentary evidence to corroborate the status of the delinquent accounts he was confronted with. Following his interview, Applicant failed to submit any documentary evidence to corroborate his claims about his efforts to contact his creditors, of any payment agreements established, or of any payments made to the creditors alleged in the SOR. He did not provide any documentary evidence with his response to the SOR, and he failed to respond to the FORM.

Applicant told the investigator during his July 2020 interview, that his financial problems started when he did not complete his college courses and the VA cancelled his financial aid in 2018. He was immature and used the financial aid to pay some debts. When the VA cancelled his financial aid, he became delinquent on some accounts and started to use credit cards to pay his debts and living expenses. He claimed he was paying the smaller debts first, one at a time, and then moving on to other debts. His plan was to use his income tax refunds to pay his debts. To avoid recurrence, Applicant intended to avoid using credit cards and purchase only necessities using cash. Applicant claimed he was living within his financial means and his current financial situation was stable.

In his February 2022 answer to the SOR, Applicant claimed he was working on removing the account alleged in SOR ¶ 1.c (\$12,130) from his credit report. He implied he was a class member on the ITT Student Loan Forgiveness Lawsuit, CFPB v. Peaks Trust, in the U.S. District Court for the Southern District of Indiana. I take administrative notice that the U.S. Department of Education (DOE) announced in August 2021 that it would forgive student debt for more than 100,000 borrowers who attended colleges in the now-defunct ITT Technical Institute chain, but left before graduating. The action will offer \$1.1 billion in loan forgiveness to 115,000 borrowers who attended ITT Tech, which had more than 130 campuses across 38 states. Notwithstanding, Applicant failed to submit documentary evidence to show that he is a member of the protected class in the lawsuit and that his student debt has been or will be forgiven.

Applicant claimed he was trying to remove his name from the car loan alleged in SOR ¶ 1.e (\$6,639), because it was his ex-wife's account. He averred the car was repossessed after their separation in November 2018. I note that the credit reports in evidence show the account as a joint account. Applicant failed to submit documentary evidence to show this was his ex-wife's personal account, that he was not a joint owner of the account, and had no financial responsibility for it.

Applicant also claimed he was making payments on the account alleged in SOR ¶ 1.h (\$4,000). He failed to submit documentary evidence to show any payments made on the account since December 2019, the “last activity” date on the account, based on the October 2021 credit report. (Item 5) Concerning SOR ¶¶ 1.i (\$1,355) and 1.j (\$755), he explained he failed to complete some college courses and the VA initiated collection efforts to recover for overpayments it made to him. He failed to repay the overpayments and the accounts were charged off. Applicant claimed he paid part or all of the debts via an IRS income refund garnishment. He failed to present documentary evidence to corroborate his payment claims.

Concerning the remaining SOR accounts, Applicant stated in his February 2022 answer to the SOR that he was “working on paying smaller debts first to create a snowball effect and satisfy all debts.” He failed to submit documentary evidence about his efforts to contact his creditors, of any payment agreements established, and of any payments made to the creditors alleged in the SOR. The accounts alleged in the SOR are outstanding and unresolved.

Applicant failed to submit sufficient documentary evidence about his efforts to contact his creditors, of any payment agreements established, and of any payments made to the creditors alleged in the SOR. He presented no evidence to show he has participated in financial counseling or has a working budget. Moreover, he did not present evidence of his current financial situation (gross monthly income, child support, 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 nine charged-off accounts (¶¶ 1.a through 1.f, and ¶ 1.e through 1.j) totaling \$78,428, and one account in collection (¶ 1.g, for \$617), all totaling over

\$79,000. All of the SOR allegations are established by Applicant's SOR admissions, his statements to an OPM investigator during his 2020 interviews, and the credit reports in evidence. The accounts alleged in the SOR are outstanding and unresolved. (FORM, Items 2, 4, 5, and 6)

Concerning SOR ¶ 1.c (\$12,130), Applicant failed to submit documentary evidence to show that he is entitled to the student loan forgiveness, or that his student debt has been or will be forgiven. He claimed SOR ¶ 1.e (\$6,639), was his ex-wife's account. However, the credit reports in evidence show the account as a joint account. Applicant failed to submit documentary evidence to show this was his ex-wife's personal account, that he was not a joint owner of the account, and had no financial responsibility for it.

Regarding SOR ¶ 1.h (\$4,000), Applicant failed to submit documentary evidence to show any payments made on the account before or after December 2019, the "last activity" date on the account, based on the October 2021 credit report. (Item 5) Concerning SOR ¶ 1.i (\$1,355) and SOR ¶ 1.j (\$755), Applicant failed to present documentary evidence to corroborate his claims that the IRS garnished some of his income tax refunds and applied it to these two debts. 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 enlisted in the Army and served eight years on active duty. Since his 2016 discharge, he has been consistently employed by federal contractors. He presented no evidence of periods of unemployment or underemployment. He attributed his financial problems to his immaturity and living beyond his means. He was using his student financial aid to supplement his income. The cancellation of his financial aid because of his failure to complete his college courses cannot be considered a circumstance beyond his control.

Applicant failed to submit documentary evidence to corroborate his efforts to contact his creditors, of any payment agreements established, or of any payments made. He presented no evidence to show he has participated in financial counseling or is following a budget. He did not present evidence of his 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.

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. Moreover, 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, 35, honorably served eight years in the Army on active duty. He has been working for federal contractors since his discharge in 2016. Notwithstanding, 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.j:	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