



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



In the matter of:)	
)	
)	ISCR Case No. 19-03277
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
 For Applicant: Alan V. Edmunds, Esq.
 10/31/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is sufficient to demonstrate financial responsibility. He resolved three of the four delinquent accounts alleged in the Statement of Reasons (SOR) and is making payments on the remaining account. The evidence is sufficient to mitigate the financial considerations security concerns. Clearance is granted.

Statement of the Case

Applicant submitted his first security clearance application (SCA) on March 30, 2018. He was interviewed by a background investigator from the Office of Personnel Management (OPM) on December 18, 2018, and answered a set of interrogatories from the Defense Office of Hearings and Appeals (DOHA) on September 13, 2019. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued him a SOR alleging security concerns under Guideline F (financial considerations) on July 9, 2020. Applicant answered the SOR on August 3, 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 June 2, 2021. The scheduling of the hearing was delayed due to COVID 19 health considerations and travel restrictions. DOHA issued a notice of hearing (NOH) on February 25, 2022, scheduling a video teleconference hearing for March 16, 2022. On that date, Applicant informed me he had retained Mr. Edmunds as counsel on March 9, 2022. I postponed the hearing and rescheduled it for April 20, 2022. Government Exhibits (GE) 1 through 6 were admitted into the record without objection. GE 7 is the Government's discovery letter, dated November 30, 2020, which was marked and admitted into the record, but it is not substantive evidence.

Prior to the hearing, by three emails dated March 16, 2022, Applicant submitted his proposed exhibits, comprised of four letters of reference, his resume and biography, a statement for the account alleged in SOR ¶ 1.c, and a \$700 payment on that account made on March 16, 2022. By email dated April 12, 2022, Applicant's counsel submitted exhibit (AE) 1, comprised of Tabs marked A through F. By email dated April 19, 2022, Applicant's counsel submitted Tabs G through L. Post-hearing, by email dated May 6, 2022, Applicant submitted Tabs M through P. Applicant's counsel submissions include the documents Applicant submitted on March 16, 2022. Applicant testified, as reflected in the transcripts received on March 28, 2022 (Tr.) and April 28, 2022 (Tr2.). All exhibits were admitted without objection.

Findings of Fact

The SOR alleges four delinquent debts totaling about \$42,000. In his answers to the SOR, Applicant admitted all of the factual allegations in the SOR and submitted documentary evidence showing that he had resolved or paid the accounts alleged in SOR ¶¶ 1.a (cancellation of debt dated December 31, 2019; AE A), 1.b (settled and paid; AE B), and 1.d (settled and paid in August 2020; AE C).

Applicant's 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 61 years old. He earned a bachelor's degree in electrical engineering in 1983, a master's in computer engineering in 2002, and started a second master's degree in 2018. (Tr2. 6) He married in 1998 and divorced in June 2006. (AE L) He has a son, age 21, and a daughter, age 17. (Tr2. 8, AE J)

Applicant's employment history shows he worked as a systems engineer between September 2001 and January 2009, making approximately \$103,000 a year. He was unemployed between February 2009 and August 2010. He was self-employed as a handyman between September 2010 and August 2011, while seeking full-time employment. He worked as a systems engineer between September 2011 and January 2017, making about \$89,000 a year. He was unemployed between February 2017 and December 2017. He has been working as a senior specialist systems engineer for a defense contractor, his security sponsor, since January 2018. His annual income is about \$111,000.

In response to questions in Section 26 (Financial Record) of his 2018 SCA, Applicant disclosed that he had financial problems and revealed the four accounts alleged in the SOR and that he owed property taxes (not alleged in the SOR). He established that he had been in contact with his creditors and was making payments on some of his delinquent accounts. An investigator with the Office of Personnel Management (OPM) interviewed Applicant in December 2018, and he discussed the accounts alleged in the SOR and other accounts that were not alleged because he had resolved them.

Applicant explained that his financial problems resulted from a combination of factors, including his 2006 divorce, and two unemployment periods. After his divorce, he was required to provide alimony for his ex-wife, child support for two children, and for the financial support of two households. The additional expenses strained his financial situation. He was laid off from his job and was unemployed between February 2009 and August 2010. He worked as a handyman between September 2010 and August 2011, while seeking full-time employment.

Applicant's financial problems and the four debts alleged in the SOR resulted from this period of unemployment and underemployment. He used his credit to pay for his mortgage, car note, and family's living expenses. He was the sole source of income and his income was insufficient to pay the delinquent accounts and their living expenses. After he found employment, he took some time to get his financial situation stable. He then contacted his creditors and tried to pay his delinquent debts, but the interest charges were so high that he had difficulty paying off the debts.

Applicant was laid off and unemployed again between February 2017 and December 2017. He stated that he learned his lesson from his first period of unemployment, and he avoided acquiring any additional delinquent debts during his second unemployment period. He went into a cash only expense policy where if he did not have the cash to pay for something he would not buy it. He has continued with this cash only policy to present. He believes that because of his stable employment and current financial situation he will not have the same financial problems in the future. In April 2022, he participated in online financial counseling. (AE 1, Tab M)

Applicant's priority has always been to take care of his children's needs first and then to pay his home mortgage and other secured obligations. Applicant highlighted that because of his good financial practices he was able to pay off his mortgage and a car note.

When Applicant contacted the creditor of the account alleged in SOR ¶ 1.a to try to settle or establish a payment plan, the creditor offered him a cancellation of debt on December 31, 2019. (AE A; Tr. 20-21) Concerning the accounts alleged in SOR ¶¶ 1.b and 1.d, he submitted documentary evidence showing that he had settled and paid both accounts. (AE B and AE C)

SOR ¶ 1.c alleged a 2015, \$12,583 judgment entered against Applicant. Apparently, he was wrongfully advised not pay it and to let it fall off his credit report, but

after understanding the consequences, he considered it a bad idea. He contacted the creditor several times to try to settle or establish a payment plan, with no results. The creditor did not want to settle for less than owed. At hearing, Applicant testified that he had made four payments on this account and reduced it to about \$10,500. He made one payment in June 2017, apparently while trying to establish a payment plan. He made one payment in March 2022 and two in April 2022. Post-hearing, Applicant submitted documentary evidence showing he paid \$1,800 in May 2022, and his current balance is \$8,719. (AE 1, Tab N)

Concerning his current financial situation, Applicant believes it is very stable and he lives comfortably within his means. He has been working diligently to bring his financial situation under control. He is able and willing to pay his delinquent debts and promised to be financially responsible in the future. He is confident that he will be able to resolve any future financial problems. He has a savings account with about \$4,000, checking account with close to \$2,000, and his 401k retirement account has close to \$400,000. (Tr. 39-40)

At hearing, Applicant acknowledged he owed property taxes on his home. He testified he intended to pay his delinquent property taxes after his hearing. Documentary evidence submitted post-hearing shows he paid the property tax owed (\$9,832) in May 2022. (AE 1, Tab P) I find that Applicant was candid and forthcoming during the clearance process. He revealed his financial problems in his 2018 SCA, and discussed his financial problems during his interview and at his hearing.

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 accumulated four delinquent debts that were placed for collection. 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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 resolved three of the delinquent accounts alleged in the SOR; two were resolved before the SOR was issued (¶¶ 1.a and b). He recently established a payment plan with the creditor of the account alleged in SOR ¶ 1.c. Applicant attributed his financial problems to his divorce and his two periods of unemployment and underemployment. These factors are circumstances beyond his control that adversely affected or aggravated his financial situation.

As the DOHA Appeal Board has noted in the past, a clearance adjudication is not directed at collecting debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. On balance, when considered in light of the record as a whole, I find that the evidence is sufficient to establish that Applicant was financially responsible under the circumstances.

Applicant started addressing some of his delinquent accounts before the issuance of the SOR. He considered not paying one of the accounts when the creditor refused to settle for less than the amount owed. He sought out financial counseling, legal advice, and communicated with his creditors. He established payment plans, and he complied with the promises he made to make payments. In doing so, Applicant has demonstrated some financial responsibility.

The record evidence shows that Applicant does not have a problem complying with government rules, regulations, and systems. His evidence is sufficient to establish mitigation of the financial considerations security concerns. Applicant acted responsibly under the circumstances, and he made a good-faith effort to resolve his financial problems. Applicant's financial issues are being resolved and they do not cast doubt on his current reliability, trustworthiness, and good judgment. Because of the clearance process, Applicant fully understands he is required to maintain financial responsibility to be eligible for a clearance. This is his first clearance application. I believe he will be financially responsible in the future.

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, 61, receives favorable credit for his work for a federal contractor. He also receives favorable credit for resolving three of the accounts alleged in the SOR. He should have been more diligent addressing his delinquent accounts. However, he made good-faith efforts to correct his mistakes. He credibly stated that he will pay the remaining debt listed on the SOR. 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.d:	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 or continue Applicant’s eligibility for a security clearance. Clearance is granted.

JUAN J. RIVERA
Administrative Judge