



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



In the matter of:)	
)	
)	ISCR Case No. 21-02348
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
 For Applicant: *Pro se*
 11/08/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish that he acted responsibly under the circumstances, or that he made a good-faith effort to resolve his financial problems. Moreover, he failed to provide evidence of his current financial situation, without which it is not possible to assess whether he is financially overextended. He did not intentionally falsify his security clearance application as alleged. Personal conduct concerns are mitigated, but the financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on April 17, 2020, seeking the continuation of his clearance eligibility. A background investigator from the Office of Personnel Management (OPM) interviewed him on June 17, 2020. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued him an SOR alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct) on November 5, 2021. Applicant answered the SOR on November 18, 2021, submitted a two-page statement with three documents, and requested a decision based on the written record in lieu of a hearing.

Applicant received a copy of the Government's file of relevant material (FORM), containing the evidence supporting the security concerns, on February 14, 2022. He was afforded 30 days after receipt of the FORM to raise objections, to submit evidence in extenuation and mitigation, and to submit evidence of his efforts to resolve his financial problems. The Defense Office of Hearings and Appeals (DOHA) received his one-page answer to the FORM on March 15, 2022. The case was assigned to me on April 12, 2022. Without objections, I admitted and considered the Government's proposed evidence and Applicant's response to the SOR, with its enclosures, and his answer to the FORM.

Procedural Issue

On August 12, 2022, I *sua sponte* reopened the case. I emailed Applicant requesting documentary evidence about any payments he has made since October 2021 on the account alleged in SOR ¶ 1.a, and the balance of the account. He responded on August 15, 2022, with a one-page document from the account's collection agency. I collectively marked the emails, and Applicant's document, as Hearing Exhibit (HE) 1.

I copied Department Counsel on my August 12, 2022 email reopening the case. Applicant copied Department Counsel with his August 15, 2022, response. Without objections, I admitted and considered HE 1.

Findings of Fact

Under Guideline F, the SOR alleges a charged-off loan for about \$21,000 (SOR ¶ 1.a), and a charged-off student loan for \$6,250. (SOR ¶ 1.b) Under Guideline E, the SOR alleges Applicant intentionally falsified his April 2020 SCA when he failed to disclose the accounts alleged in SOR ¶¶ 1.a and 1.b in his answers to the financial questions in his 2020 SCA. (SOR ¶ 2.a)

In his answers to the SOR, Applicant admitted the financial allegations in SOR ¶¶ 1.a and 1.b, but denied that he deliberately falsified or withheld information from his 2020 SCA. (SOR ¶ 2.a) He averred that the omission was unintentional, an oversight on his part.

Applicant's SOR admissions are incorporated into my findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 49 years old. He earned a bachelor's degree in 2013, a master's degree in 2014, and a second master's degree in 2015. (Item 3) He married in 1995 and divorced in 2002. He married his current spouse in 2003. He has four adult children, ages 33, 29, 25, and 18, and two stepchildren, ages 29 and 36. (Item 3)

Applicant served in the U.S. Air Force between April 1993 and May 2013. He was honorably retired in the grade of technical sergeant (E-6). He stated that the Air Force granted him eligibility for a secret clearance in 2004, which he maintained without any security concerns. After his retirement, he worked a year for a civilian company. His

current employer and clearance sponsor, a large federal contractor, hired him in June 2014. Since then, he has held several positions with the federal contractor while holding a clearance.

Applicant took a \$20,000 home improvement loan in 2011, and defaulted on the loan in 2017. (SOR ¶ 1.a) He failed to explain what circumstances, if any, prevented him from making the loan payments. On October 26, 2021, Applicant contacted the lender and established a new payment schedule of \$77 per month, and made one payment that month. He established this payment agreement after his June 2020 interview with an OPM investigator, but before the SOR was issued on November 5, 2021. His payment history shows that he made a \$154 payment on November 2, 2021, and consecutive monthly payments of \$77 from December 2021 until July 21, 2022. (See HE 1)

Concerning the defaulted education loan (SOR ¶ 1.b), Applicant explained he co-signed the loan for his stepdaughter and she defaulted. After the creditor asked him to repay the loan, he settled the account for less, and paid it. The creditor provided him with a document indicating he was “fully released” from any further obligation as of May 2017. (See documents attached to SOR answer.)

In Section 26 (Financial Record) of his 2020 SCA, Applicant failed to disclose the two accounts alleged in the SOR. He answered “No” to the financial questions asking whether in the last seven years he had an account turned over to a collection agency, had been over 120 days delinquent on any debt, or was currently over 120 days delinquent on any debt. Because of the two delinquent accounts alleged in the SOR, Applicant should have answered “Yes” to all three questions with respect to the home improvement loan, and “Yes” to the first two questions concerning the defaulted student loan. If he resolved the education loan in 2017, then the education loan was not 120 days delinquent when he completed the SCA.

During his June 2020 background interview, Applicant volunteered that his stepdaughter defaulted on the student loan. He did not disclose his defaulted home improvement loan until the investigator confronted him about it.

In his answer to the SOR, and in his response to the FORM, Applicant stated that his failure to list the two debts was an oversight and not an attempt to deceive or withhold information. In his defense and in mitigation, Applicant highlighted his over 20 years of military service on active duty in the Air Force, his honorable discharge, and his over eight years of service for a large federal contractor supporting the U.S. military. He believes his record demonstrates he is a man of integrity, honor, and of strong moral fiber. He claimed his military and civilian records reflect no blemishes or negative entries, and demonstrate he has been successful. Since he was hired in 2014, Applicant was promoted twice and currently holds a managerial position.

Applicant 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). Without any documentary evidence of his current financial situation, it is not possible for me to assess whether he is financially overextended.

The only glimpse at Applicant's current financial situation arises from a review of his 2021 credit bureau report (CBR). (Item 4) Except for the two accounts alleged in the SOR, he has no other delinquent accounts. The CBR shows 20 accounts (trades) with "0" balance; three student loans totaling \$28,357; and 13 open accounts with an aggregate balance of about \$535,415, which include nine credit-card or revolving-charge accounts, two mortgages, three auto loans, and two unsecured loans.

Applicant did not report any adverse information under the SCA financial questions. He denied he deliberately falsified or withheld information from his 2020 SCA about his finances. After considering all of the evidence, including Applicant's age, education, experience, honorable military service, and service for a federal contractor, I find he did not intentionally provide false information or conceal his finances on the SF 86.

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 had two delinquent debts that were charged off. 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 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 apparently resolved the delinquent student loan in 2017, before the SOR was issued in November 2021. He established a payment plan in October 2021 to resolve the charged-off loan, and made nine consecutive payments in accordance with his agreement.

On balance, when considered in light of the record as a whole, I find that the evidence is insufficient to establish that Applicant was financially responsible under the circumstances. He took the home improvement loan in 2011 and defaulted on it in 2017. He failed to present any evidence to explain what caused him to default on the loan, or what actions he took to resolve the loan between 2017 and October 2021, when he established his payment agreement. He presented no evidence of efforts to contact the creditor, to establish a payment plan, or of any payments made between 2017 and October 2021.

The record evidence leaves me with doubts and concerns about Applicant’s current financial situation. 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). Without any documentary evidence of his current financial situation, it is not possible for me to assess whether he is financially overextended.

Applicant’s evidence is insufficient to establish mitigation of the financial considerations security concerns. It does not establish that he acted responsibly under the circumstances, or that he made a good-faith effort to resolve his financial problems. This is not his first clearance application. He knew or should have known that he is required to establish and maintain financial responsibility to be eligible for a clearance.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not report any adverse information under the financial questions on his April 2020 SF 86. After considering all of the evidence, including Applicant's age, education, experience, honorable military service, and service for a federal contractor, I find he did not intentionally falsify the SF 86. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for Applicant.

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 and E 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, 49, receives favorable credit for his honorable, active duty service in the Air Force, and for his good work as a federal contractor. He also receives favorable credit for resolving one of the accounts alleged in the SOR. Notwithstanding, the limited evidence he presented in the FORM is insufficient to erase all doubts about his financial situation and to establish that his finances are 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. If Applicant satisfactory explains his current financial situation, a security clearance eligibility could be in his 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a :	For 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 or continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge