



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



In the matter of:)
)
) ISCR Case No. 21-01385
)
Applicant for Security Clearance)

Appearances

For Government: Daniel P. O'Reilley, Esq., Department Counsel
For Applicant: *Pro se*
11/30/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to present sufficient evidence to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 26, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on August 10, 2021, and requested a hearing before an administrative judge. The case was assigned to me on March 18, 2022. The initial notice of hearing was issued on May 13, 2022, convening a hearing for June 1, 2022. Before the hearing, Applicant was injured in an accident and requested a postponement, which I granted. I convened the rescheduled hearing on June 17, 2022. I admitted Government Exhibits (GE) 1 through 5 into the record without objection. GE 5, the Government's Discovery Letter, was marked and made part of the record, but it is not substantive evidence.

Applicant testified, as reflected in the transcript (Tr.) received on June 27, 2022. Post-hearing, he submitted Applicant Exhibit (AE) 1, comprised of a two-page debt relief

document, dated July 27, 2021; and two favorable reference letters. I admitted AE 1 into the record without objection.

Procedural Issue

At hearing, Applicant affirmatively waived his right to 15-days advanced notice of his hearing. He stated he had sufficient time to prepare for the hearing and was ready to proceed. (Tr. 10)

Findings of Fact

Applicant is 29 years old. He graduated from high school in 2010. He enlisted in the Army in 2012, and served on active duty four years. He was a sergeant (E-5) at the time of his honorable discharge in February 2016. He married in 2015, and he has two children ages seven and four. He attended college, on and off, between 2016 and August 2020, but he has not earned a degree.

Following his discharge, Applicant was unemployed for about two weeks. He then worked for two different employers for short periods. His current employer and security clearance sponsor hired him in November 2016. He has not had any periods of unemployment or underemployment since. The Department of Defense (DOD) granted him eligibility for a clearance in 2012. He stated that he never had any security issues or concerns, except for those in the SOR.

When he started working with his current employer in 2016, Applicant was making about \$50,000 a year. Shortly thereafter, he was promoted and his earnings increased to \$75,000, and then to \$100,000. He and his wife each have been making \$100,000 a year since at least 2019. Their combined income is \$200,000 annually. (Tr. 41-42) He has a monthly net remainder of over \$1,700. (Tr.45)

Applicant submitted his most recent security clearance application (SCA) on August 3, 2020, seeking the continuation of his clearance eligibility required for his job. In Section 26 (Financial Record) of his 2020 SCA, he disclosed he “had issues after he took out a loan” in 2017, and defaulted on it. He claimed he was working to resolve his delinquent debt.

The subsequent background investigation revealed the 12 delinquent accounts alleged in the SOR (four charged-off and eight in collection), totaling about \$43,000. In his answer to the SOR, Applicant denied SOR ¶¶ 1.a, 1.d, 1.e, 1.h, 1.j, and 1.k. He admitted SOR ¶¶ 1.b, 1.c, 1.f, 1.g, 1.i, and 1.i. He stated that he had been resolving his delinquent debts and promised that if he had not resolved some of them, he was willing to do so. All of the SOR allegations are established by his admissions and the record evidence.

At his hearing, Applicant testified that he started to contact his creditors and sought to settle or pay his delinquent debts, after he received the SOR. He claimed he paid SOR ¶¶ 1.g, 1.k, and 1.l, and disputed 1.h. Applicant presented no documentary evidence of

any disputes filed, contacts with his creditors, any settlements made, payment agreements established, or of any payments made after he acquired the obligations. He took no action to resolve his debts after he submitted his 2020 SCA, received the July 2021 SOR, or after his hearing. He presented no evidence to establish that he has participated in any recent financial counseling.

Applicant explained that his financial problems were the result of him being young and immature. He accrued most of the SOR debts when he was in the service. It was his first time away from home, and he did not know how to handle his finances. He did not take his financial responsibilities seriously, did not pay his debts, and he let the accounts become delinquent. He stated he was careless and irresponsible because he did not address his delinquent debts. (Tr. 48) He claimed that he now understands the severity of the consequences caused by his financial irresponsibility, and how his financial irresponsibility could be a concern to the Government.

Applicant described his current financial situation as good. He and his wife were considering buying a home. He believes that he should be able to pay his delinquent accounts in the near future by using the services of a debt consolidation company. He stated he has never been the type to shy away from hard work or to make excuses. He takes responsibility for his financial problems, promised to fix them and not to allow it to happen again in the future.

In July 2021, Applicant contacted a debt relief company and requested information about the process to retain their services. (AE 1) His documentary evidence does not show that he retained the services of the debt relief company. There is no documentary evidence that he signed a contract, or of any payments made to the debt relief company from July 2021 to present. He averred he and his wife are in the process of establishing a new budget including his delinquent accounts.

Applicant testified that he takes his responsibilities as a security clearance holder very seriously. He noted that he has had a clearance since 2012, when he was in the service. He considers himself to be trustworthy, reliable, and honest. His references speak highly about him. They consider him to be efficient, detail-oriented, competent, and possessing a strong drive to succeed. He is among the top five employees within his company and has received numerous performance awards. His references endorsed his eligibility for a clearance without reservations.

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. (See Section 7 of EO 10865; See *also* EO 12968, Section 3.1(b) (listing prerequisites for access to classified or sensitive information))

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The evidence establishes Applicant accumulated 12 delinquent accounts, totaling \$43,000, that have been delinquent for several years. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

(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.

None of the above mitigating conditions is applicable to Applicant's case. His financial problems are frequent, recent, and ongoing. He did not establish that circumstances beyond his control caused or contributed to his financial problems. Moreover, his evidence is insufficient to show that he was financially responsible under his circumstances. Applicant started working for a federal contractor in June 2016, earning \$50,000 a year, and shortly thereafter he was promoted and his earnings increased to \$75,000 and then to \$100,000. He has been making \$100,000 a year for at least two years. He and his wife's combined income is \$200,000 annually.

Applicant presented no documentary evidence of efforts to contact his creditors, of any payments made, of settlement agreements negotiated, or of payment plans established to resolve his delinquent accounts. He took no action to resolve his delinquent accounts after he submitted his 2020 SCA, was questioned about his financial problems during his interview, received the SOR, or participated in his hearing. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. Considering his annual earnings, Applicant's evidence is insufficient to explain why he has been unable to address his delinquent accounts. Applicant claimed he paid or resolved three accounts and disputed another. He failed to submit documentary evidence to corroborate his claims.

Considering the evidence as a whole, there is insufficient evidence for a determination that Applicant has been financially responsible and that his financial problems are under control. His financial issues are recent and ongoing. They continue to cast serious doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's financial problems are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant, 29, receives credit for four years of honorable military service, and his service to a federal contractor since 2016; all while possessing eligibility for a clearance. He explained his young age and immaturity led him into financial problems. Those factors notwithstanding, his evidence is insufficient to explain why he did not address his delinquent accounts until after he received the SOR. He did not provide persuasive documentary evidence showing he made specific and reasonable efforts to resolve his debts. His lack of documented responsible financial action concerning these debts raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. The record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance.

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. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)). 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.

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.i: | Against Applicant |

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge