



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



In the matter of:)
)
) ISCR Case No. 14-00175
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Leslie McAdoo Gordon, Esq.

09/15/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant should have been more diligent addressing his student loans. Notwithstanding, he has been making consistent payments since March 2012. He recently applied for a consolidation loan to bring the student loans current. Applicant financial situation is solid. His income is sufficient to resolve his financial problems in the near future. I find that his omissions in his security clearance application were not intentional or made with the intent to deceive. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 28, 2013. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct) on March 7, 2014.¹ Applicant answered the SOR on April 14, 2014,

¹ The DOD acted under Executive Order 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 Adjudicative Guidelines

and requested a hearing before an administrative judge. The case was assigned to me on May 20, 2014. Applicant was working abroad and requested a delay from June 6, 2014, until the day of the hearing. Applicant's counsel entered her appearance on June 16, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on August 1, 2014, convening a hearing on August 20, 2014.

At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified, and presented exhibits AE 1 through 10. AE 7 through 10 were received post-hearing. With the exception of GE 4, all exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 29, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.c, and 1.e, with comments. He denied SOR ¶¶ 1.d and 2.a. His admissions are hereby incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 46-year-old software engineer working abroad for a defense contractor. He received his bachelor's degree in information-systems science in May 1998, and completed his master's degree in the same subject in May 2002. He married his first wife in March 1990, separated in March 2006, and was divorced in March 2008. He has a son, age 22, and a daughter, age 18, of this marriage. He married his current wife in May 2013.

Applicant enlisted in the U.S. Air Force in May 1989, and honorably served until October 1998, when he was discharged with the rank of staff sergeant (E-6). While in the service, Applicant possessed a secret security clearance. There is no evidence to show that he compromised or caused others to compromise classified information.

After his discharge, Applicant worked for a private company as a software engineer from 1998 to October 2002. During this period he did not require access to classified information and did not possess a security clearance. In December 2002, he was hired by his current employer, a government contractor. As part of his job requirements, Applicant moved overseas in June 2006 where he currently resides. When he was hired by his current employer, his security clearance was reinstated. He requires a security clearance to continue performing his duties.

Applicant requested a continuation of his security clearance in January 2013. Section 26 (Financial Record) of his 2013 SCA asked him to disclose whether in the past seven years he had defaulted in any type of loan, and whether he had bills or debts turned over to a collection agency. Applicant answered "no" to both questions and

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

disclosed no financial problems. The subsequent background investigation disclosed the five delinquent debts alleged in the SOR, which totaled about \$72,000.

Concerning the debts alleged in SOR ¶ 1.a (for dental work performed on his daughter in July 2009) and SOR ¶ 1.e (a utility bill for his ex-wife's residence accrued in 2006), Applicant explained that both debts were incurred after he separated from his ex-wife in 2006. Pursuant to the divorce agreement, Applicant provided his ex-wife with \$1,715 a month in child support and alimony. He believed that his ex-wife was using her financial support to pay for medical and other living expenses. Applicant credibly explained that because he moved abroad in June 2006, he had no knowledge of the delinquent debts until he received the March 2014 SOR. After receipt of the SOR, Applicant investigated the debts and paid them. (AE 1 and 2)

SOR ¶¶ 1.b and 1.c alleged that Applicant was more than 120 days delinquent on two student loans totaling approximately \$60,000. Applicant acknowledged the two student loans and that at one point they were delinquent. He was financially irresponsible when he failed to continue paying the student loans on a regular basis. He explained that he replaced his personal laptop and forgot to reinstate the automatic payment program he was using to pay the student loans. He claimed that this was an oversight on his part and not an intentional default on his student loans.

In February 2012, the creditor obtained a wage garnishment against Applicant and started collecting the delinquent student loans in March 2012. The creditor has been collecting 15% of Applicant's disposable income every pay period since March 2012. Currently, he is paying close to \$800 a month toward the student loan debt. (AE 9) Applicant believed that because he had been making payments since 2012, he was no longer delinquent on the student loans and that he was current. After receipt of the SOR, Applicant contacted the creditor to determine why his student loans were in a delinquent status. In August 2014, he requested a consolidation loan to remove the loans from delinquent or collection status. As of his hearing date, the consolidation loan was close to being approved.

Applicant denied that he owed the debt alleged in SOR ¶ 1.d. He admitted that in 1996 he had a credit card account with that creditor, but testified that he paid the debt. The Government based its allegation on a February 2013 credit report showing a credit card account opened in September 2003, in collection for \$11,968, with a report date of September 2006 (GE 3, page 5). The same credit report at page 6 shows a credit card account with the same creditor, opened in September 2003, indicating a paid collection for \$4,868, with a report date of April 2011. More recent credit reports show no delinquent debts owed to that creditor. (GE 2 and AE 10) Considering the evidence as a whole, I find that the Government evidence is insufficient to establish that Applicant owes this debt.

Applicant's financial situation is solid. His gross monthly income is \$14,764. His and his wife's combined net monthly income is \$8,637. They have monthly expenses of \$4,472, and their monthly disposable income is \$3,794. He has \$14,000 in a checking

account, close to \$8,000 in a savings account, and almost \$100,000 in a retirement account.

Applicant acknowledged that he had not been diligent monitoring his financial accounts and balancing his check book on a frequent basis. He explained that he was late paying some of his debts (like the two alleged in SOR ¶ 2.a), but that those two debts were not in collection or delinquent when he submitted his 2013 SCA. He explained that he always has a large balance in his checking account, and he does not balance his check book monthly. When he has recurrent debts, he sets up a computerized payment schedule, and only reviews the payments when there are issues. He was not aware that the student loans alleged in SOR ¶¶ 1.b and 1.c were “in collection” because he had not looked at his credit report in a long time. He believed that he was current on both student loans because he had been paying the student loans via a garnishment of wages since March 2012.

Applicant’s references consider him to be hard-working, honest, reliable, and trustworthy. His work ethic and contributions make him an excellent team member and valuable employee. He has established a reputation for following security rules and procedures and making sure that his team members comply with security rules and procedures. He is considered to be a loyal American. His references recommended his suitability for a continued security clearance.

Policies

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 AG 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 AG 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 AG ¶ 2(a). 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; AG ¶ 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

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18)

Applicant’s ex-wife failed to pay two debts she incurred, and the delinquent accounts were reflected in his credit record. (SOR ¶¶ 1.a and 1.e) Because he was separated from his then wife and moved abroad in 2006, he was unaware of the delinquent debts. After learning about the delinquent debts in March 2014, Applicant contacted the creditors and paid them. The debt alleged in SOR ¶ 1.e was paid by Applicant in 2003. These three debts do not raise security concerns.

Applicant’s student loans (SOR ¶¶ 1.b and 1.c) became delinquent when he negligently failed to reinstate his computerized payments after he replaced his laptop. The creditor has been collecting the student loans through a garnishment of wages established in March 2012. After finding out that the student loans were in a delinquent or collection status, Applicant requested a loan consolidation to bring the loans current in August 2014. Financial considerations disqualifying conditions AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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

(f) the affluence resulted from a legal source of income.

Considering the evidence as a whole, I find that financial considerations mitigating conditions AG ¶¶ 20(a) and (c) apply. The circumstances that led to Applicant's financial problems are not recent. His separation, divorce, and move abroad in 2006 contributed to the debts becoming delinquent. He believed his ex-wife was paying any medical and utility bills incurred with the child support and alimony he was providing her. Applicant was unaware that the two debts were delinquent until he was served with the SOR in 2014. After finding out about the debts, he paid them.

Concerning the student loans, Applicant should have been more diligent monitoring and paying his student loans. Notwithstanding, he has been paying the student loans since March 2012 through a garnishment of wages. He believed the student loans were current because he had been making the payments for two years. He is seeking a consolidation loan to bring the student loans current.

As stated above, Applicant should have been more diligent monitoring and paying his debts. Notwithstanding, the evidence does not establish that he abandoned or intended to default on his financial obligations. In light of Applicant's payment history, and his recent efforts to resolve his financial problems, I find that there are clear indications that his financial problems are being resolved. The remaining mitigating conditions are not applicable to the facts in this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

The SOR alleged that Applicant falsified his 2013 SCA (Financial Record) when he failed to disclose that he had defaulted on two student loans and had bills turned over to collection agencies. I find that Applicant was unaware the debts alleged in SOR ¶¶ 1.a and 1.e were delinquent. These were debts incurred by his ex-wife after they separated and he moved abroad to work for his current employer. It was reasonable for him to expect his ex-wife to pay such bills with the child support and alimony that he was providing.

Concerning the two delinquent student loans, I consider it plausible for Applicant to believe that the loans were current when he completed the 2013 SCA because he had been paying the loans through a March 2012 wage garnishment. Considering the record as a whole, particularly Applicant's demeanor while testifying, I find that his omissions were not intentional or made with the intent to mislead the Government.

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. AG ¶ 2(c).

Applicant honorably served in the Air Force for close to ten years. He was discharged with the rank of staff sergeant (E-6). While in the service, Applicant possessed a secret security clearance. There is no evidence to show that he compromised or caused others to compromise classified information. He has been working for a government contractors since 2006.

Applicant is considered to be hard-working, honest, reliable, and trustworthy. His work ethic and work contributions make him an excellent team member and valuable employee. He has established a reputation for following security rules and procedures and making sure that his team members comply with security rules and procedures. He is considered to be a loyal American. His references recommended his suitability for a continued security clearance.

Applicant should have been more diligent addressing his student loans. Notwithstanding, he has been making consistent payments since March 2012. He

recently applied for a consolidation loan to bring the student loans current. Applicant's financial situation is solid. He and his wife's combined income is sufficient for Applicant to pay his family day-to-day living expenses and his debts.

Applicant has learned his lesson by going through the security clearance process. He now understands that his financial responsibility is a security concern. He is fully aware that his failure to maintain financial responsibility will adversely impact his ability to possess 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:	For APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Guideline E:	For APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge