



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



In the matter of:)
)
) ISCR Case No. 12-07451
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish a track record of financial responsibility. He also failed to establish that he does not have a financial problem and that his finances are under control. Guideline F security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 26, 2012, seeking to retain a clearance required for his job. On April 20, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on May 28, 2015, and elected to have his case decided on the written record.

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

A copy of the Government's file of relevant material (FORM), dated July 30, 2015, was provided to him by transmittal letter dated August 21, 2015. He acknowledged receipt of the FORM on September 8, 2015. Applicant was allowed 30 days to submit any objections to the FORM and to provide material in rebuttal, extenuation, and mitigation. As of November 5, 2015, Applicant had not responded to the FORM or submitted any information. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 1, 2015.

Ruling on Evidence

Department Counsel's submission included a summary of a personal subject interview on April 20, 2012. (Item 8) The summary was not authenticated as required by the Directive ¶ E3.1.20. Department Counsel's submission included a footnote advising Applicant that Item 8 was not authenticated and that failure to object to Item 8 might constitute a waiver of the authentication requirement.

Applicant did not respond to the FORM. However, a *pro se* applicant's failure to object to an unauthenticated personal subject interview is not tantamount to waiver of the authentication requirement. Waiver means "[t]he voluntary relinquishment or abandonment - express or implied - of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." Black's Law Dictionary, 1717 (Bryan A. Garner ed., 9th ed., West 2009). The record does not reflect that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not reflect that he understood the implications of waiving an objection to the admissibility of Item 8. Thus, Item 8 is inadmissible and I have not considered it.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.c through 1.i, and 1.k through 1.n, with explanations. He denied the allegations in SOR ¶¶ 1.b and 1.j. His admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 57-year-old laboratory technician employed by a federal contractor. He served on active duty in the U.S. Air Force from 1988 until 1999, when he was honorably discharged. He completed a bachelor's degree in 1997, and received a master's in business administration in 1999. Applicant claimed that he is a disabled war veteran. He married his first spouse in 1989 and divorced in 2002. He married his second spouse in 2005 and divorced in 2012. As of his answer to the SOR, he had not remarried. He has three adult children ages 26, 25, and 22.

Applicant was first granted access to classified information at the secret level in 1988, during his period in the service. The DOD continued his eligibility for a secret clearance in 2002, after Applicant was hired by his current employer, a federal contractor. Applicant has continuously possessed a security clearance since then.

Applicant disclosed in Section 26 (Financial record) of the 2012 SCA that he had financial problems, which included a delinquent credit card account, a defaulted loan, and accounts that were more than 120 days delinquent. The subsequent security clearance background investigation disclosed the 14 delinquent accounts alleged in the SOR, totaling about \$43,000, that are established by the FORM's credit reports and Applicant's admissions.

In his answer to the SOR, Applicant explained that his financial problems were the result of his 2012 divorce, the downturn of the U.S. economy, and the collapse of the housing market in his state. After his divorce, Applicant's income was insufficient to pay his living expenses and existing financial obligations.

Concerning the mortgage alleged in SOR ¶ 1.a, Applicant explained that it became delinquent during the divorce process. He tried to sell the house twice, but the buyer's loans were not approved by the bank and the sales fell through. He then tried to refinance or modify the loan, but was unsuccessful. He averred that the refinancing was denied because of two delinquent credit card accounts his ex-wife opened without his knowledge. Applicant believes that the mortgage creditor has until January 2016 to settle or waive on the loan balance. He anticipates suing the creditor if it does not waive the loan.

Applicant denied SOR ¶ 1.b. He claimed he was unaware of the debt, believed the account belonged to his ex-wife, and promised to investigate it and dispute it. SOR ¶¶ 1.c, 1.d, 1.f, 1.h, and 1.i are delinquent accounts for utilities and services Applicant or his children received. He promised to settle or dispute some of them, and he promised to pay most of them in the near future.

SOR ¶¶ 1.e, 1.g, and 1.k through 1.n are delinquent accounts for medical services provided to Applicant or his children. He averred they were unpaid because his ex-wife did not notify him of the charges, or he did not receive notice because of his many residence moves. Applicant stated in his SOR answer that "most of these (debts) are minor and will be paid and or settled immediately." Applicant presented no documentary evidence of any efforts taken to investigate, contact creditors, pay, or otherwise resolve any of the above delinquent debts.

Applicant noted that he served 11 years on active duty in the Air Force, and was honorably discharged. Since his discharge, he has worked for a federal contractor on a job that requires his eligibility for a clearance. He has held a clearance during the last 25 years without any security issues or concerns. There is no evidence to show that Applicant has ever compromised his security clearance or had any security issues, except for the current SOR allegations.

The July 2015 credit report (Item 7) shows Applicant paid three accounts for less than owed (in 2009, 2010, and 2011), and three delinquent debts owed to a cable provider (paid in February 2012). None of the paid accounts were alleged in the SOR. All of the SOR accounts are reflected as delinquent accounts in the 2015 credit report.

Applicant provided little information about his financial situation. He did not provide any information about his income, monthly expenses, and whether his current income is sufficient to pay his current living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget.

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 lists 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 14 SOR delinquent accounts raise the applicability of two financial considerations disqualifying conditions: AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations."

AG ¶ 20 lists five 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; 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 financial considerations mitigating conditions fully apply. Applicant's financial problems are ongoing, and his evidence is insufficient to establish that he is in control of his financial problems. He has been fully employed during the last 14 years. However, he presented little documentary evidence of any efforts to contact creditors, pay, or otherwise resolve his debts, since he acquired them, or after he submitted his 2012 SCA. In his answer to the SOR, he promised to take care of the "minor" delinquent

debts, but failed to do so and provided little explanation for his lack of action, except for blaming his current financial problems on his 2012 divorce.

Even considering Applicant's divorce as a circumstance beyond his control that contributed or aggravated his financial problems, Applicant failed to present sufficient evidence to show that he was financially responsible under his circumstances to warrant applicability of AG ¶ 20(c).

Moreover, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income and expenses, and whether his current income is sufficient to pay his living expenses and debts. There is no information to show that he participated in financial counseling or that he follows a budget. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control. In sum, Applicant failed to establish that he has a track record of financial responsibility.

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). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant receives credit for his 11 years in the service and 15 years working for a federal contractor while possessing a security clearance without any security issues or concerns, except for those in the current SOR.

Notwithstanding, Applicant failed to present sufficient evidence to establish a track record of financial responsibility, that he currently does not have a financial problem, and that his finances are under control. He failed to mitigate the Guideline F security concerns.

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.n:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge