



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



In the matter of:)
)
) ISCR Case No. 12-09692
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is a 62-year-old employee of a defense contractor providing interpreter services in Afghanistan. He has six outstanding debts that became delinquent between 2003 and 2010. He failed to establish financial responsibility in the handling of his debts. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 6, 2010. On September 18, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on December 12, 2012, and elected to have his case decided on the written record in lieu of a hearing.

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

A copy of the file of relevant material (FORM), dated February 24, 2013, was provided to him by transmittal letter dated March 25, 2013. Applicant received the FORM on April 3, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. His response was due on May 3, 2013. As of May 23, 2013, he had not responded to the FORM. The case was assigned to me on May 24, 2013.

Findings of Fact

Applicant denied the factual allegations in the SOR. After a thorough review of the evidence of record, including his SCA, answers to the SOR, two screening questionnaires, and three credit bureau reports, I make the following findings of fact:

Applicant is a 62-year-old interpreter employed by a defense contractor. He was born in Afghanistan, and immigrated to the United States in 1986. He married his wife in Pakistan in 1989, and he has two children, ages 19 and 17. He became a naturalized U.S. citizen in July 1992.

Applicant's work history indicates he was a salesman at a food store from March 1999 to March 2002. He purchased a store in March 2003, and worked full-time in his store until March 2010. Applicant claimed that his financial problems started in 2007, as a result of the downturn of his business and the U.S. economy. In March 2010, Applicant sought employment with his current employer, a government contractor. He provides interpreter services to U.S. personnel deployed to Afghanistan. This is his first security clearance application. Apparently, he has been deployed to Afghanistan during some periods between 2010 and the present.

Applicant disclosed in his April 2010 SCA (Section 26 – Financial Record) that he had financial problems, which included foreclosed real estate properties. The background investigation addressed his financial problems and revealed the six delinquent debts alleged in the SOR. The SOR debts are established by the credit reports submitted by the Government and Applicant's prior statements.

In 2003, Applicant purchased four real estate properties. While the U.S. economy was doing well, he was able to pay the mortgages using the rental income. When the U.S. economy took a downturn in 2007, Applicant's tenants were not able to keep their jobs or pay the rent, and Applicant's properties were foreclosed.

Applicant acknowledged that the debts alleged in SOR ¶¶ 1.a (\$19,005) and 1.b (\$21,328) resulted from two unpaid mortgages for homes he purchased, presumably in 2003, that were foreclosed. He claimed he lost the down payments that he made on both properties of \$45,000 and \$65,000, respectively. In his answers to screening questionnaires from April 2010 and April 2012, Applicant indicated that he had no intention to pay the debt alleged in SOR ¶ 1.a. Concerning SOR ¶ 1.b, in 2010, he indicated he had no intention to pay this debt. In 2012, he claimed he had paid this debt. Applicant provided no documentary evidence to support his claim.

The delinquent debt alleged in SOR ¶ 1.c (\$8,589) concerns a credit card Applicant used for his store. In 2010, he apparently rented his business for a period of three years. In his 2010 questionnaire, Applicant stated he would pay this debt when he had the money. In his 2012 questionnaire, Applicant stated he had not paid this debt and that he has no intention to pay it.

SOR ¶ 1.d (\$2,588) concerns an apartment lease Applicant co-signed for one of his employees. The employee moved away and did not honor the rental contract. The landlord attempted to collect from Applicant. In 2010, Applicant stated the debt was unpaid and that he did not intend to pay it. In 2012, Applicant stated that the debt was paid. He presented no documentary evidence to support his claim.

Applicant acknowledged the delinquent debt alleged in SOR ¶ 1.e (\$245) in 2010. He terminated early a wireless service contract and was assessed an early termination fee. He disagreed with the fee, and refused to pay it. Applicant claimed he paid the debt when it was forwarded for collection. He presented no documentary evidence to support his claim. Applicant also claimed that the debt alleged in SOR ¶ 1.f (\$199) is a duplicate of the debt alleged in SOR ¶ 1.e. Based on credit reports submitted, he failed to present sufficient evidence to establish that these debts are duplicated.

Applicant's March 2010 personal financial statement (PFS) indicated he had \$7,700 net monthly income; \$2,350 of monthly expenses; and \$5,306 of monthly debt payments; with a net remainder of \$50. Applicant's April 2012 PFS indicated a monthly net income of \$12,978; with monthly expenses of \$8,008; for a net remainder of \$4,970.

Applicant failed to present documentary evidence to show that he maintained contact with his creditors, established payment plans, or disputed any of the SOR debts. He presented no evidence to show he has received financial counseling. Applicant receives credit for seeking a higher-paying job with a government contractor. However, he failed to present any evidence to show that he used his higher earnings to pay any of his outstanding delinquent debts.

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.

The evidence established the six delinquent debts alleged in the SOR, totaling over \$51,900, that became delinquent between 2003 and 2010. 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.

Applicant has been fully employed with a government contractor since March 2010, and earns over \$150,000 a year. He presented no evidence of any debt payments, contacts with creditors, disputes, or that he otherwise attempted to resolve his debts. Additionally, I have questions about Applicant's judgment in purchasing four real estate properties in 2003 on a \$2,800 salary, all of which were foreclosed. Applicant's lack of financial responsibility shows he is not aware of what is required of him to establish eligibility for a security clearance.

Considering the evidence as a whole, I find that none of the financial considerations mitigating conditions apply. Applicant's financial problems are ongoing, and he still owes a large debt. I considered that the debts became delinquent, in part, because of the downturn of the U.S. economy, a circumstance beyond his control. Notwithstanding, he presented no evidence to show financial responsibility with respect to any of the debts alleged in the SOR.

Applicant presented no evidence that he received financial counseling. In light of all available evidence, Applicant's unresolved debts cast doubt on his current reliability, trustworthiness, and judgment.

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 is a 62-year-old employee of a defense contractor providing interpreter services in Afghanistan since 2010. He has six outstanding debts that became delinquent between 2003 and 2010. He failed to establish financial responsibility in the handling of his financial obligations. He is not aware of what is required of him to be eligible for a security clearance.

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.f: 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