



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



In the matter of:)	
)	
)	ISCR Case No. 12-11634
)	
Applicant for Security Clearance)	

Appearances

For Government: Phillip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems resulted from the downturn of his business and the U.S. economy in 2007. He demonstrated financial responsibility by paying \$89,000 on six debts not alleged in the SOR. He disputed the three SOR debts, and the disputes are not yet resolved. With his current job earnings, he has the financial ability to resolve the three SOR debts. There are clear indications that his financial problem is being resolved and is under control. He is fully aware that he is required to maintain financial responsibility to retain his eligibility for a security clearance. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 18, 2010. On November 30, 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 January 10, 2013, 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

A copy of the file of relevant material (FORM), dated February 14, 2013, was provided to him by transmittal letter dated February 15, 2013. Applicant received the FORM on March 7, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. He timely responded to the FORM on March 7, 2013, and provided additional information that was made part of the record. The case was assigned to me on April 5, 2013.

Findings of Fact

Applicant denied the factual allegations in the SOR. After a thorough review of the evidence of record, including his answers to the SOR, the FORM, an interrogatory, and a screening questionnaire, I make the following findings of fact:

Applicant is a 53-year-old interpreter employed by a defense contractor. He was born in Afghanistan, and immigrated to the United States in 1982. He married his wife in 1982, and he has three children, ages 22, 21, and 15. He became a naturalized U.S. citizen in July 1992.

Applicant's work history indicates he worked as a taxi driver from February 2000 until September 2003. He purchased an art framing shop in September 2003, and worked full-time in his shop until August 2010. Applicant's financial problems started in 2007 as a result of the downturn of his business and the U.S. economy. His business income dropped to almost nothing. He used his credit cards to pay his mortgages and his family's day-to-day living expenses. With his income dwindling, in July 2009, Applicant started a second full-time job driving a taxi, and his family members assisted managing his framing shop.

In August 2010, Applicant sought employment with his current employer, a government contractor. He provides interpreter services to U.S. assets deployed to Afghanistan. This is his first security clearance application. He has been deployed to Afghanistan since September 2010. Applicant submitted two favorable reference letters signed by a U.S. Army lieutenant and a captain. Both officers commend Applicant for his dedication and professionalism. He is considered to be trustworthy, an invaluable asset to their missions, and an irreplaceable translator.

Applicant disclosed in his August 2010 SCA (Section 26 – Financial Record) that he had financial problems, which included delinquent debts and loans that were in collection or charged off. The background investigation addressed his financial problems and revealed that he had nine delinquent debts. During subsequent interviews and financial interrogatories, Applicant documented that he paid or resolved six of the initial nine debts of concern. The SOR alleges the three remaining delinquent debts,

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

totaling over \$47,000. The SOR debts are established by the credit reports submitted by the Government.

Applicant's current annual income is over \$120,000. In his October 2012 personal financial statement, Applicant indicated a monthly net income of over \$9,500 (including his wife's net monthly salary of \$1,400); monthly expenses of \$2,400, and a \$2,044 mortgage payment. He indicated no other debt payments. His net monthly remainder was over \$5,000. He also stated that he had \$20,000 in stocks and bonds, and \$7,000 in bank savings.

In his Answer to the SOR, Applicant denied the SOR allegations. In his response to the FORM, Applicant submitted a sworn, handwritten statement indicating that he was currently deployed to Afghanistan, and that he used all of his savings, but \$1,000, to pay his outstanding delinquent debts. He also included a February 2013 credit report showing that the three debts alleged in the SOR are being disputed. Applicant did not provide specific evidence to substantiate the basis of the dispute. However, considering the evidence as a whole, he may have a reasonable basis for the dispute.

SOR ¶¶ 1.a (\$22,823) and 1.b (\$16,880) alleged delinquent credit card accounts to bank C. SOR ¶ 1.c (\$7,225) alleged a delinquent credit card account to bank W, but in collection by P. Applicant's credit reports show he had three other accounts with bank C that he paid: the first for \$13,938; and the last two had no value indicated. Additionally, he had two other accounts with bank W that he paid and are closed, one for \$32,070, and the second for \$1,110. It is not clear from the evidence whether some of these collection accounts were duplicated.

The November 2012 Government interrogatories (Item 7) raised questions about nine delinquent accounts. The evidence shows payment of six accounts, totaling approximately \$89,063. This does not include a mortgage for \$418,000 that Applicant brought current (there is no clear information as to how much he paid to bring the account current), and another mortgage with the same bank just mentioned, for \$82,500 that Applicant paid off. It is not clear from the evidence whether these are the same mortgage loan or different mortgage loans that Applicant paid or resolved.

Applicant explained that his financial problems were related to the downturn in his art framing business. Considering his written statements and credit reports, I find that he acted responsibly by getting a second full-time job as a taxi cab driver to increase his earnings and pay his delinquent debts. He also maintained contact with his creditors, established payment plans, and disputed three debts. Additionally, Applicant sought a higher-paying job with a government contractor, and after starting this job, Applicant paid some of his outstanding delinquent debts. He presented no evidence to show he has received financial counseling. However, he received help and financial counseling from his pastor to resolve his financial problems.

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 SOR alleged three delinquent debts, totaling over \$47,000, that became delinquent between 2007 and 2010, when Applicant's business started to fail as a result of the 2007 downturn of the U.S. economy. 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 disputed the three debts alleged in the SOR, and the dispute is unresolved. Notwithstanding, the record evidence shows that between 2010 and March 2013, Applicant resolved six other debts not alleged in the SOR, totaling approximately \$89,000. Likely, he just needs additional time to resolve the disputes or to pay the three SOR debts.

Applicant's payment of the six debts not alleged in the SOR shows that he is fully aware that he is required to maintain financial responsibility to retain his eligibility for a security clearance, and ultimately his job. If he fails to resolve the remaining delinquent financial obligations or to maintain financial responsibility in the future, his eligibility for a security clearance could be revoked.

Considering the evidence as a whole, I find that financial considerations mitigating conditions AG ¶¶ 20(a), 20(c), and 20(e) partially apply. Although his financial problems are ongoing, and he still owes a large debt, the debts became delinquent under circumstances that are unlikely to recur. He is now fully employed with a government contractor, and earns over \$120,000 a year. AG ¶ 20(b) applies. The debts became delinquent because of the downturn of the U.S. economy, a circumstance beyond his control. He was financially responsible by taking a second full-time job as a taxi driver, and ultimately seeking a higher-paying job with a government contractor. He used his savings and recent earnings to pay six delinquent debts totaling over \$89,000.

Applicant presented no evidence that he received financial counseling; however, he sought the assistance of his pastor to help him resolve his delinquent debts. I find that there are clear indications that the problem is being resolved and is under control. Applicant had substantial savings and used them to pay most of his delinquent debts. With his current job, he has the financial means to resolve the three remaining debts, provided that the disputes are not resolved in his favor. I believe he will resolve the three SOR debts in the near future. On balance, Applicant's three unresolved debts do not cast doubt on his current reliability, trustworthiness, and judgment. The remaining mitigating condition is not reasonably raised by the facts in this case.

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 53-year-old employee of a defense contractor providing interpreter services in Afghanistan. He is considered to be trustworthy, and a valuable asset to U.S. forces in that country. He recently paid six delinquent debts totaling over \$89,000. He had substantial savings and used his savings and current income to pay those debts. He is in the process of disputing the three SOR delinquent debts. There are clear indications that the problem is being resolved and is under control. I believe he will resolve the three SOR debts in the near future.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation

and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant is fully aware that he is required to maintain financial responsibility to retain his eligibility for a security clearance, and ultimately his job. On balance, Applicant's unresolved SOR debts do not cast doubt on his current reliability, trustworthiness, and judgment.

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.c:	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