



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



In the matter of:)
)
) ISCR Case No. 13-00056
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is a 43-year-old employee of a defense contractor. He defaulted on two debts that became delinquent in 2006, totaling over \$23,000. He failed to establish financial responsibility in the handling of his debts. Clearance denied.

Statement of the Case

Applicant originally submitted a security clearance application (SCA) in January 2011, but failed to answer financial interrogatories provided to him by the Defense Office of Hearings and Appeals (DOHA) in June 2011, and his application was closed in August 2011. He submitted his most recent SCA on March 31, 2013. On June 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (financial considerations).¹ Applicant

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.

answered the SOR on July 1, 2013, and elected to have his case decided on the written record in lieu of a hearing.

A copy of the file of relevant material (FORM), dated August 19, 2013, was provided to him by transmittal letter date August 20, 2013. Applicant received the FORM on August 27, 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 September 27, 2013. As of October 16, 2013, he had not responded to the FORM. The case was assigned to me on October 17, 2013.

Findings of Fact

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

Applicant is a 43-year-old employee of a government contractor. He attended college and completed a bachelor's degree in May 2006. He married his first wife in August 1997, and was divorced in January 1998. He married his current wife in June 2011. Applicant has two children, ages five and two. Applicant's work history indicates he worked as a bartender from May 1991 until September 2004. He has been part-time self-employed since 1999. He started working full-time for his current employer, a government contractor, in March 2007.

Applicant filed for Chapter 7 bankruptcy protection in June 2003, and his dischargeable debts were discharged. He presented no information concerning how he acquired the debts that were discharged, whether they were delinquent, and how he addressed those debts before his bankruptcy filing.

Applicant disclosed in his March 2013 SCA (Section 26 – Financial Record) that he had two charged-off delinquent credit card accounts. The background investigation addressed his financial problems and confirmed the two charged-off debts alleged in the SOR, totaling over \$23,000. The SOR debts are established by the credit reports submitted by the Government, Applicant's SCAs, his February 2013 letter to DOHA, and his February 2011 report of interview.

Applicant explained that in 2005, he opened the two credit card accounts alleged in the SOR and used them to purchase supplies for his new business venture. He started his business in January 2006. The business failed and he closed it in November 2011. Applicant claimed he made some payments on the credit card accounts until he realized that his payments were not lowering the balance owed because of the penalties and interest assessed. He also claimed that he attempted to renegotiate the terms of the debts with the creditor, but the creditor refused. Both accounts were charged off in 2006. Applicant failed to present documentary evidence showing that he made any payments.

In his 2013 SCA, and consistent with his February 2011 statement and his February 2013 letter to DOHA, Applicant acknowledged these were his delinquent credit card accounts. He stated that he had no intention of paying these debts. In 2011, he told the investigator that he did not have a legal obligation to pay these debts because the state's four-year statute of limitations had run. According to his calculations, the debts would be removed from his credit reports in 2013. Applicant stated in his 2011 interview that he had no other financial difficulties during the last seven years. He considered his current financial situation stable, and his income sufficient to pay his debts. He had not participated in financial counseling.

In his answer to the SOR, Applicant denied the two SOR allegations, and indicated that the delinquent debts were deleted from his most recent credit report. The credit report he submitted with his answer to the SOR shows he has no other delinquent debts.

Applicant started working full-time for his current employer in March 2007, and he has been working part-time (self-employed) from 1999 to present. He presented no information concerning his current monthly earnings, expenses, debts, and net remainder. He failed to explain why he was financially unable to pay the two debts alleged in the SOR. Applicant presented no evidence to show he has received financial counseling.

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 two delinquent debts alleged in the SOR, totaling over \$23,000, that became delinquent in 2006. 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 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.

Considering the evidence as a whole, I find that the evidence is insufficient to establish that any of the financial considerations mitigating conditions fully apply. Applicant was discharged of his legal obligations under a Chapter 7 bankruptcy protection filing in 2003, and he defaulted on the two charged off debts alleged in the SOR in 2006.

Applicant has been fully employed with a government contractor since March 2007, and he has been part-time self-employed since 1999. He presented no evidence concerning his monthly income, expenses, debts, and net remainder from 2007 to present. He presented no documentary evidence of any debt payments, or that he otherwise attempted to resolve the two delinquent debts alleged in the SOR. He has not participated in financial counseling.

The financial considerations concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. (See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).) An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. Applicant's evidence failed to establish his financial responsibility. In light of the scant evidence available, 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 43-year-old employee of a defense contractor since 2007. He defaulted on two debts that became delinquent in 2006. He failed to submit sufficient documentary evidence to establish financial responsibility in the handling of his financial obligations.

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.b:	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