



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



In the matter of:)	
)	
)	ISCR Case No. 14-00058
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

08/15/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems were the result of circumstances beyond his control. Although he should have been more diligent in addressing his delinquent debts, documentary evidence shows he contacted creditors, established payment plans, and has been making payments on his debts. Now that his wife has full-time employment, their combined income should be sufficient for Applicant to resolve his financial problems in the near future. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 9, 2013. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on March 7, 2014.¹

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.

Applicant answered the SOR, and requested a hearing before an administrative judge on March 29, 2014. The case was assigned to me on May 23, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the first notice of hearing on June 3, 2014 convening a hearing for June 20, 2014. Applicant retained counsel and requested a postponement on June 10, 2014. The hearing was convened on July 1, 2014.

At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified, and presented exhibits AE A through K. AE K was received post-hearing with seven enclosures. Attached to his answer to the SOR, Applicant also submitted a 15-page document, which was made part of the record with his SOR. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on July 10, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted all of the SOR factual allegations. 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 43-year-old employee of a defense contractor. He graduated from high school in 1988, and completed a few college courses. He married his first wife in 1990 and was divorced in 1996. He married his current wife in 1996. He has two 23-year-old stepdaughters, a 23-year-old daughter, and two sons, ages 17 and 13. He enlisted in the U.S. Army in September 1998, and served honorably until July 2001, when he received a medical discharge. He was an E-4 at the time of his discharge. Applicant receives a \$700 disability pension. While in the service, Applicant possessed a secret security clearance. He never compromised or caused others to compromise classified information.

Applicant has been employed with different government contractors since November 2001. He is currently a fuels operator providing services at a military installation. He requires a security clearance to continue performing his duties. Applicant disclosed in his 2013 SCA that he had financial problems, which included a judgment, numerous delinquent debts, and a delinquent mortgage. The subsequent background investigation disclosed the 11 delinquent debts alleged in the SOR.

Applicant's financial problems started in 2007 as a result of his wife's unstable employment history. While she was working full-time, they were current on their financial obligations with their combined incomes. In 2007, she lost her full-time job and was forced to work part-time jobs. She was unemployed in-between jobs. SOR ¶¶ 1.a through 1.i alleged delinquent debts for medical services provided to Applicant's son in 2011, as a result of a broken arm. During 2012-2013 one of his sons was hospitalized several times because of problems with depression and suicidal ideations.

Applicant believed that his son's medical expenses were paid under his wife's work insurance plan. Apparently, the medical expenses accrued when she had no

insurance coverage because she was working part-time or was unemployed. Applicant did not find out about the delinquent medical debts until April-May 2013.

SOR ¶¶ 1.a through 1.c alleged delinquent debts for medical services provided to Applicant's son that are in collection by agency A. Applicant presented documentary evidence showing that he established a payment plan and made payments from July 2013 to July 2014. (Answer to DOHA Interrogatories, and AE K-3)

SOR ¶¶ 1.d through 1.g alleged delinquent debts for medical services provided to Applicant's son that were in collection by agency D. Applicant presented documentary evidence showing that he established a payment plan and made five \$50 payments in 2013, and three payments in 2014. (Answer to the SOR, and AE F, AE K-2) Collection agency D stopped collecting the debts in 2014. Applicant is in communication with the new collection agency to continue the payment plan, but as of the hearing date, he had not started making payments. He promised to start making payments in the near future.

SOR ¶¶ 1.h and 1.i alleged delinquent debts for medical services provided to Applicant's son that are in collection by agency U. Applicant presented documentary evidence showing that he established a payment plan and started making payments in November 2013. Since then he has made nine payments, the last one in June 2014. (AE K-4)

Applicant is over \$30,000 delinquent on his mortgage payments. He stopped making his mortgage payments in April 2013. (SOR ¶ 1.j) Applicant explained that his mortgage delinquency is the result of his wife's unstable employment history, his father passing away, and his son's unexpected medical expenses. When his father passed away, Applicant paid for his father's burial expenses and then continued to help his mother financially. He also admitted that after his father died, he neglected his own financial obligations.

Applicant is currently seeking a loan modification. According to the documents submitted, he is undergoing a trial period for the loan modification to take place. Pursuant to the loan modification agreement, he scheduled a payment of \$1,513 on July 3, 2014, and a \$700 payment on July 18, 2014. (AE K-6)

Concerning the debt alleged in SOR ¶ 1.k, Applicant contacted the creditor and is in the process of establishing a payment plan.

Applicant testified that his financial situation has improved. Both he and his wife are currently working full-time. With their combined incomes, totaling around \$75,000, they are in a stable financial situation. He believes that his current income will allow him to continue making his payment agreements. Additionally, his son is stable and has not had any additional medical problems. Applicant and his family modified their lifestyles to meet their financial obligations and they live within their financial means. He also presented a financial counseling certificate dated July 1, 2014. (AE K-1)

Applicant purchased a new car in June 2012 for \$28,000. He explained that he had no other choice because his old car required expensive repairs and too much maintenance. He has not acquired any other large debts since then. He no longer uses credit cards to pay for his purchases. A review of Applicant's credit reports shows no evidence that he is living outside of his financial means. On the contrary, his credit reports show that he paid several delinquent debts not alleged in the SOR after they were charged off.

Applicant was candid and upfront during the security clearance investigation process. He disclosed his financial problems in his 2013 SCA. He also candidly discussed his financial problems with a government investigator in October 2013, and at his hearing. Applicant's neighbors and friends consider him to be hard-working, honest, and trustworthy. He is an asset to his community and a good friend.

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 financial problems resulted from his wife’s unstable work history since 2007. Because of her part-time work and periods of unemployment, she was unable to assist Applicant paying the family’s day-to-day expenses and debts. Additionally, Applicant’s son incurred medical expenses that were not covered by insurance. Applicant also paid for his father’s burial expenses and assisted his mother with her day-to-day living expenses. As a result, Applicant did not have the financial means to pay both his family’s day-to-day living expenses and his debts. 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.

Financial considerations mitigating condition AG ¶ 20(a) does not apply. Applicant's financial problems are recent and ongoing. AG ¶¶ 20(b), (c), and (d) apply. Applicant's financial problems were the result of circumstances beyond his control, i.e., his wife's unstable work history; his son's medical problems that led to most of the debts alleged in the SOR; and the financial expenses related to his father's passing and assisting his mother with her financial situation.

Considering the evidence as a whole, I find that Applicant should have been more diligent contacting his creditors, setting up payment plans, and in his efforts to resolve his financial problems. Notwithstanding, Applicant started his efforts to resolve his financial problems in August 2013. He contacted creditors, established payment plans, and has been making frequent payments. He has initiated good-faith efforts to repay his creditors. He is in the process of establishing his financial responsibility. Additionally, he participated in financial counseling.

Applicant's wife is currently employed and provides financial assistance to pay the debts. His son is doing well and he is now covered by medical insurance. In light of Applicant's recent efforts to resolve his financial problems and his history of making payments, I find that there are clear indications that Applicant's financial problems are being resolved. The remaining mitigating conditions are not applicable to the facts in this case and do not apply.

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 Army for close to three years, and was medically discharged in 2001. He possessed a security clearance while in the service. He has been working for government contractors since 2001. He disclosed his financial problems in his 2013 SCA, and was candid and forthcoming during the security clearance process.

Applicant's financial problems were the result of circumstances beyond his control. But, he should have been more diligent addressing his delinquent debts. Notwithstanding, he contacted creditors, established payment plans, and has been making somewhat consistent payments on his debts. Now that his wife has full-time

employment, their 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 for the Government. 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
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Subparagraphs 1.a – 1.k:	For Applicant
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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