



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



In the matter of:)
)
) ISCR Case No. 14-00329
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/08/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems were caused by his reduction in grade, discharge from the service, and unemployment period. He started working for government contractors in August 2013, and was released of all dischargeable debts in May 2014. He participated in financial counseling, is following a budget, and he and his family established significant lifestyle changes to prevent further financial problems. He has not acquired any additional delinquent debts, and there is no evidence that he currently has a financial problem. Considering the circumstances of this particular case, Applicant’s past financial problems do not show he lacks judgment, reliability, or trustworthiness. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 3, 2013. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging

security concerns under Guideline F (financial considerations) on March 25, 2014.¹ Applicant answered the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me on June 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on June 4, 2014, scheduling a hearing for June 18, 2014.

At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified, and presented four exhibits (AE 1 through 4). Attached to his answer to the SOR, he also submitted extracts of his February 2014 Chapter 7 bankruptcy filing, which were made part of the record. All exhibits were admitted without objection and were made part of the record. DOHA received the hearing transcript (Tr.) on July 1, 2014.

Findings of Fact

In his answer to the SOR, Applicant failed to admit or deny the SOR factual allegations. However, the extract of his February 2014 Chapter 7 bankruptcy filing shows that the debts belonged to him. He also included two reaffirmation agreements for two large delinquent debts. 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 36-year-old employee of a defense contractor. He married his wife in 1996, and they have a daughter, age 17, and a son, age 10. He enlisted in the Navy in September 1996, and was discharged in February 2013. During his service, Applicant distinguished himself through his outstanding performance. He was selected above his peers for highly visible positions of responsibility and promoted to chief (E-7). He possessed a security clearance during most of his 16 years of service without any security concerns, except for those that led to his court-martial and the subsequent financial problems. His performance and accomplishments are outlined in his evaluations and summarized on his Certificate of Release or Discharge from Active Duty (DD Form 214). (AE 3 and 4)

In 2011, Applicant was involved in an extramarital relationship with a female subordinate. He was court-martialed for charges of adultery and failure to obey Navy regulations. He pleaded guilty to both charges, and in October 2012, the court-martial reduced him from the grade of E-7 to E-5. In February 2013, Applicant was administratively discharged from the Navy, and his service was characterized as General-Under Honorable Conditions. Applicant was unemployed from the date of his discharge until August 2013, when he was hired by a government contractor.

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's financial problems were the result of his reduction in grade, his discharge from the service, and a six-month period of unemployment. Before his court-martial, Applicant and his wife carried significant debt, but with their combined incomes they were current on their financial obligations. There is no evidence to show Applicant had any financial problems before his court-martial.

Applicant's reduction from E-7 to E-5 reduced his monthly pay by over \$900. Because he was reduced to the grade of E-5, Applicant knew he would not be allowed to continue serving in the Navy. In preparation for his discharge, Applicant's wife terminated her employment and moved the children to another state. This resulted in him losing a substantial part of their income, and an increase in their day-to-day living expenses. He was unable to pay both his debts and his family's day-to-day living expenses.

After his reduction in grade, Applicant maintained contact with some of his creditors and continued to make partial and sporadic payments as allowed by his reduced earnings. Ultimately, Applicant realized that with his reduced income he would not be able to pay his delinquent financial obligations. He consulted with an attorney and filed for Chapter 7 bankruptcy protection in February 2014. He was released of his dischargeable debts, including all the debts alleged in the SOR, in May 2014.

Applicant participated in financial counseling twice, once before his bankruptcy filing and then after his bankruptcy discharge. He and his family modified their lifestyles to meet their financial obligations and they now live within their financial budget. He has been working full-time for government contractors since August 2013, and his wife is also working. They currently have a combined monthly income of around \$4,500. They are able to save between \$500 to \$700 a month after paying their day-to-day living expenses and current financial obligations. He also participates in a 401(k) retirement plan sponsored by his employer. Applicant and his wife appear to be in a solid financial situation. There is no evidence of any additional financial problems or irresponsibility. As a result of his bankruptcy discharge, his full-time employment, and his wife's employment, Applicant's financial problems are under control.

Applicant was candid and upfront during the security clearance investigation process. He discussed his 2011 lapse in judgment (the relationship with a subordinate) and the financial problems resulting from his reduction in grade and discharge from the service. He expressed sincere remorse for his lack of judgment, the loss of his 16-year career, and the hardships he placed on his family.

Applicant started college in 2011, and he received his bachelor's degree in general management in February 2014. He is currently attending a master's program for human resources management with a minor in project management. He is seeking a promotion and higher earnings to better support his family and provide for his children's education.

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 engaged in adultery with a subordinate and violated service regulations. In October 2012, Applicant was court-martialed and reduced in rank. In February 2013, he was discharged from the service, and he was unemployed until August 2013. 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 conditions AG ¶¶ 20(a) and (c) apply. Applicant's financial problems were the result of his 2011 criminal misconduct that led to his court-martial and discharge from the service. There is no evidence of any additional incidents of security concern before or after his 2011 misconduct, except for the SOR allegations.

Applicant has been working full-time for government contractors since August 2013. His wife is also employed and their combined income is sufficient for them to pay their day-to-day living expenses and current debts. He and his family implemented

significant lifestyle changes that have allowed them to establish financial responsibility. Since his May 2014 Chapter 7 bankruptcy discharge Applicant has not acquired additional delinquent debts. He received financial counseling and is following a budget that allows him to save around \$500 a month. Additionally, he graduated from college and is attending a master's degree program.

Considering the evidence as a whole, I find that Applicant's financial problems occurred under circumstances unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and judgment. He received financial counseling and there are clear indications that the financial problem is resolved. The remaining mitigating conditions are not raised by 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 served in the Navy for close to 17 years. His evaluations show that he was a top-notch sailor. Except for the SOR allegations, and the incident that led to his court-martial, there is no other evidence of financial problems or any other security concerns.

Following his discharge from the Navy, Applicant started rebuilding his life and career. He started working for government contractors in August 2013. In addition to stabilizing his financial situation, he completed a bachelor's degree and is participating in a master's degree program. There is no evidence that he currently has a financial problem. Applicant has learned a hard lesson and I find that his financial problems are unlikely to recur and do not show he currently lacks judgment, reliability, or trustworthiness.

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.e:	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