



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



In the matter of:)	
)	
)	ISCR Case No. 14-00856
)	
Applicant for Security Clearance)	

Appearances

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

01/20/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is a 44-year-old consultant employed by a defense contractor. He has ten outstanding debts, totaling close to \$170,000, some of which have been delinquent since 2008. His financial problems are partially attributed to unemployment and the housing-market downturn. Notwithstanding, 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 1, 2013. On June 9, 2014, 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 July 12, 2014, and requested a hearing before an administrative judge. The case was assigned to me on October 9, 2014. The Defense

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.

Office of Hearings and Appeals (DOHA) issued the notice of hearing on October 24, 2014, scheduling a hearing for November 7, 2014.

At the hearing, the Government offered three exhibits (GE 1 through 3), which were admitted without objection. Applicant testified and presented four exhibits (AE 1 through 4). I left the record open to allow Applicant an additional period to submit documentary evidence to support his hearing allegations. AE 4 was submitted post-hearing. DOHA received the hearing transcript (Tr.) on November 18, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations, except for SOR ¶ 1.f, which he denied. After a thorough review of the evidence of record, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 44-year-old consultant employed by a defense contractor. He attended college and completed a bachelor's degree in computer science and management-information systems in 1993. He is currently working on his master's degree. He married his wife in June 1999, and they have two daughters, ages 13 and 11.

Applicant worked as a systems engineer for a large communications company from March 1995 to October 2003. He was unemployed from October 2003 until January 2004. He was hired by his current employer in January 2004. Applicant testified that he was granted access to classified information at the secret level from 2005 to 2008. In 2008, his access was upgraded to a top-secret level.

Applicant disclosed in his April 2013 SCA (Section 26 – Financial Record) that he had failed to timely file and pay his 2009, 2010, and 2011 income tax returns, and that the IRS placed an \$8,000 lien against his home. He estimated his IRS debt around \$30,000. He promised to resolve his problems with the IRS within a month. Applicant also stated that his financial problems started in January 2008. He explained that his wife lost her job in mid-2009, and the family lost her \$95,000 annual income. To complicate his financial difficulties, his variable-rate mortgage went up and he had difficulties making his mortgage payments. In December 2010, he refinanced the home, and started paying his taxes through an escrow account. Applicant also disclosed that he had delinquent credit cards in collection totaling close to \$75,000.

The background investigation addressed his financial problems and revealed the ten delinquent debts alleged in the SOR, totaling close to \$170,000. The SOR debts are established by the credit report submitted by the Government and by Applicant's testimony.

Applicant explained that when he married his wife in June 1999, she was working and making around \$95,000 a year. Both were making good money and they did not have financial problems. They purchased a condominium in September 2001, for

\$199,000. They lived in it until their children were born and they needed more space. Applicant was unemployed from October 2003 to January 2004. In 2004, Applicant and his wife purchased a detached home for over \$500,000. The September 2014 credit report shows a current mortgage balance of \$610,000. After they purchased the home, they rented the condominium and it provides them with some income.

Applicant's wife lost her job in September 2009, and she has been unemployed to present. She is currently trying to establish a swimming business with a friend. Applicant became the family's sole provider in 1999, and his income was insufficient to pay for their debts and the family's living expenses. Before he refinanced, his mortgage payment was \$5,000 a month. After refinancing, his mortgage payment became \$2,500. Applicant's take-home pay was approximately \$4,800 a month. Half of his monthly earnings go to pay the mortgage, and the other half pays for living expenses and some debts. Applicant testified that he is in the process of refinancing his home again. He presented no documentary evidence of his current efforts to refinance his home.

Applicant used credit cards to pay the mortgage and family's living expenses. He has not been making payments toward his delinquent credit cards, which include: SOR ¶ 1.a for \$25,952 (the creditor obtained a judgment against Applicant in 2011); SOR ¶ 1.c for \$10,651 (the creditor obtained a judgment against Applicant in 2009); SOR ¶ 1.d for \$17,104; SOR ¶ 1.g for \$59,731; and SOR ¶ 1.h for \$51,448. He currently cannot afford to make any payments toward his credit card debt because he is paying the mortgage, a home-equity line of credit, and two loans he took against his retirement account.

In his answer to the SOR, Applicant claimed that in the past he established payment plans with the creditors of the accounts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.g, and 1.h, but he was unable to maintain the payments when his wife lost her job. He presented no documentary evidence to support his claims.

The creditors are currently sending Applicant settlement offers for substantially less than what he owes. He has not been able to take advantage of the settlement offers because he does not have the financial means. He took two loans against his 401(k) retirement account and he is not allowed more than two at a time. One loan was used to make home improvements when he was considering selling his home. The second loan was apparently used to pay his back taxes. Applicant plans to repay one of the retirement account loans first, and then request another loan and use the money to settle some of his debts. He believes this is the only way he will be able to resolve his debts.

In his answer to the SOR and at his hearing, Applicant claimed that he paid the debts alleged in SOR ¶¶ 1.b, 1.e, 1.i, and 1.j. He was allowed additional time post-hearing to submit documentary evidence to show the debts were paid. He failed to present documentary evidence to support his claims. In 2010, the creditor in SOR ¶ 1.b obtained a judgment against Applicant. Apparently, some of the creditors obtained wage-garnishment-orders against Applicant.

Applicant expressed remorse for his financial situation and accepts responsibility for his financial problems. He believes he is doing all that he can do to resolve his financial problems. Applicant sought the advice of a financial counselor and was advised to file for bankruptcy protection. He is considering his options. Applicant claimed that he also consulted with a debt-consolidation company seeking help to pay his debts, but decided against it because he could not afford the payments. He stated that he no longer uses credit cards for his financial expenses. Applicant's performance appraisals show that he is a productive and valuable employee. He is considered to be trustworthy, knowledgeable, and dependable.

Applicant disclosed in his April 2013 SCA that he and his family went on the following family vacations: Saint Martin in 2004, Dominican Republic in 2005, Cayman Islands in 2006, Mexico in 2007, Nicaragua in 2007, Aruba in 2008, Bermuda in 2009, and Mexico in 2010. They went on vacation to Florida in 2011, 2012, 2013, and 2014. He explained that they drive when they go to Florida on vacation and stay with his wife's family to save money.

Applicant failed to present documentary evidence to show that he maintained contact with his creditors of the debts alleged in the SOR, voluntarily established payment plans, or disputed any of the SOR 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 ten delinquent debts alleged in the SOR, which include three unpaid judgments, totaling close to \$170,000. Financial considerations disqualifying conditions AG ¶ 19(a): “inability or unwillingness to satisfy debts,” AG ¶ 19(c): “a history of not meeting financial obligations,” and AG ¶ 19(e): “consistently spending beyond one’s means, which may be indicative by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis” 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.

Considering the evidence as a whole, I find that none of the financial considerations mitigating conditions fully apply. Applicant's financial problems are ongoing, and he owes a substantial amount of debt. He has been fully employed with a government contractor since January 2004, and has current net earnings of around \$4,800 a month. Outside of a garnishment of wages to pay for a delinquent credit card (SOR ¶ 1.a), he presented no documentary evidence of any debt payments, contacts with creditors, debt disputes, or any other efforts to resolve his debts.

I considered that the debts became delinquent, in part, because of his unemployment in 2003, and his wife's unemployment since mid-2009 to present. Applicant's and his wife's unemployment periods could be considered as circumstances beyond his control that contributed or aggravated his financial problems.

Notwithstanding, Applicant's evidence is insufficient to show financial responsibility with respect to any of the debts alleged in the SOR. He failed to present documentary evidence to show that he maintained contact with his creditors, established payment plans, disputed any of the SOR debts, or otherwise took action to resolve his delinquent debts. He has three unpaid judgments filed against him in 2009, 2010, and 2011, and apparently his wages were garnished to pay one of the judgments. It seems that Applicant has continued to live beyond his financial means, he is financially overextended, and has not taken action to change his lifestyle to address his substantial debt. There are no clear indications that his financial problems are under control, or that Applicant has a viable plan to address his financial problems. In light of all available evidence, Applicant's unresolved debts and lack of financial responsibility 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 44-year-old employee of a defense contractor since 2004. He has ten outstanding debts that became delinquent after 2008. 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.j:	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