



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



In the matter of:)	
)	
)	ISCR Case No. 14-01459
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/09/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is a 61-year-old employee of a defense contractor. He has seven outstanding debts that became delinquent in about 2012, totaling \$47,400. His financial problems are partially attributed to his divorce. 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 December 16, 2013. On May 21, 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 June 16, 2014, and requested a hearing before an administrative judge. The Government was ready to proceed on September 17, 2014. The case was assigned to me on September 24, 2014. The

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.

Defense Office of Hearings and Appeals (DOHA) issued the first notice of hearing on October 3, 2014, scheduling a hearing for October 20, 2014. Applicant emailed the hearing office staff and stated that he would not attend his hearing because of “pre-arranged plans.” The second notice of hearing was issued on October 20, 2014, scheduling the hearing for November 16, 2014.

At the hearing, the Government offered four exhibits (GE 1 through 4), which were admitted without objection. Applicant testified and presented no exhibits. I left the record open to allow Applicant an additional period to submit documentary evidence to support his hearing allegations. He did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on November 17, 2014.

Procedural Issue

At the hearing, the Government moved to withdraw the allegation in SOR ¶ 1.e, and to merge the allegations in SOR ¶¶ 1.f and 1.g into SOR ¶ 1.f. Both motions were granted as requested. (Tr. 44)

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.d, 1.f, and 1.i, totaling \$47,000. He denied the allegations in SOR ¶¶ 1.b, 1.c, 1.e, 1.g, and 1.h, totaling \$7,000. 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 61-year-old logistics coordinator employed by a defense contractor. He attended college and completed a bachelor’s degree in electronics in 1974. Since then, he completed several computer software courses. He married his wife in September 1988 and was divorced in August 2012. He has three adult children, ages 27, 24, and 22. Applicant’s 27-year-old son and his 24-year-old daughter live with him; however, only his 24-year-old daughter depends on Applicant for her support.

Applicant has consistently worked for government contractors since 1974. He started working for his current employer in 1997. He was first granted access to classified information at the secret level from 1974 to 1982. Apparently, he had no need for access to classified information from 1982 to 2013. He was granted an interim secret clearance when he submitted his November 2013 SCA. His clearance was suspended when he was issued the May 2014 SOR.

Applicant disclosed in his November 2013 SCA (Section 26 – Financial Record) that he had some delinquent debts in collection associated with his 2012 divorce. The background investigation addressed his financial problems and revealed the seven delinquent debts alleged in the SOR, totaling over \$47,400. The SOR debts are established by the credit report submitted by the Government and by Applicant’s testimony.

Applicant's financial problems appear to be the result of his separation from his wife in November 2010, and subsequent divorce in August 2012. While married, Applicant paid the mortgage and a \$50,000 home equity line of credit loan, and his wife paid all remaining debts. He averred that while married, he and his wife had good credit and no financial problems. When they separated, she stopped paying her share of the debts and he was forced to assume responsibility for them. Applicant's ex-wife also refused to contribute to the mortgage and home equity line of credit loan payments. His income was based on a \$36 hourly wage rate. He was financially unable to pay the debts and his family's day-to-day living expenses, and the debts became delinquent.

Concerning the delinquent debts, Applicant explained that SOR ¶ 1.a concerns a jewelry item he purchased for his wife while they were married. When they separated, she stopped paying the debt. Applicant's income was insufficient to pay the debt, and it became delinquent. In 2012, the creditor obtained a \$5,000 judgment against Applicant. In February 2013, the creditor started collecting the judgment through a garnishment of wages imposed against Applicant. (GE 2)

At his hearing, Applicant claimed that he had established a payment arrangement with the creditor of the debt in SOR ¶ 1.a and that he had been paying \$100 a month during the last two years. He failed to present any documentary evidence to support his claim. (Tr. 24-25)

At his hearing, Applicant admitted he was financially responsible for the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, and 1.h. The debts alleged in SOR ¶¶ 1.b, 1.c, and 1.h originated from medical services provided to his children while they were unemployed. Applicant claimed that he asked his children to pay their past-due medical expenses, but they have failed to do so. He testified that he intends to pay the medical debts if his children fail to do so. Applicant failed to present documentary evidence to show that he maintained contact with his creditors, established payment plans, or disputed any of the SOR debts.

The debts alleged in SOR ¶¶ 1.d and 1.i were for student loans Applicant cosigned for his children. Applicant's daughter stopped attending school, does not have a job, and she does not have the financial means to repay the debt. His son is working, but he has not started paying his student loan. Applicant claimed his son's student loan was in deferment. However, the credit report in evidence shows the student loan became delinquent in October 2011 and was charged off. (GE 2) Applicant failed to present any documentary evidence to support his claim.

Applicant believes that his current financial situation is stable. He claimed that his present earnings allow him to meet his current financial obligations. He has a net monthly income of \$3,800. He stated that he follows the budget that he established in August 2012. He is currently one month behind on his mortgage payments, but he claimed that he is in the process of modifying his mortgage loan. He presented no documentary evidence to support his claim. He was advised by the mortgage holder to

visit a financial counselor, but has yet to do so. Applicant stated that he no longer uses credit cards for his financial expenses.

Applicant failed to present documentary evidence to show that he maintained contact with his creditors, voluntarily established payment plans, or disputed any of the SOR debts. He 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 seven delinquent debts alleged in the SOR, totaling \$47,400. 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.

Considering the evidence as a whole, I find that none of the financial considerations mitigating conditions fully apply. Applicant has been fully employed with a government contractor since 1997, and has current net earnings of around \$3,800 a month. Outside of his garnishment of wages to pay for his delinquent jewelry debt (SOR

¶ 1.a), he presented no documentary evidence of any debt payments. He is one month behind on his mortgage payment. Applicant's financial problems are ongoing, and he owes a large debt. I considered that the debts became delinquent, in part, because of his divorce and him providing financial assistance to his children. Applicant's divorce could be considered as a circumstance 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, or disputed any of the SOR debts. He presented no evidence to show he received financial counseling. Moreover, 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 61-year-old employee of a defense contractor since 1997. He has seven outstanding debts that became delinquent after his 2012 divorce. 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.d, 1.f, 1.h, and 1.i:	Against Applicant
Subparagraph 1.e:	Withdrawn
Subparagraph 1.g:	Merged with SOR ¶ 1.f

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