



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



In the matter of:)	
)	
)	ISCR Case No. 14-01712
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems were caused by circumstances beyond his control. Although he has significant debt, Applicant demonstrated financial responsibility handling his financial problems by communicating with creditors, making payments consistent with his financial ability, and working three jobs. Considering the circumstances of this particular case, Applicant’s financial problem does not show he currently lacks judgment, reliability, or trustworthiness. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 7, 2014. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on June 9, 2014.¹ Applicant answered the SOR on June 19, 2014, and requested an administrative

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.

decision. He requested a hearing before an administrative judge when he was served the Government's File of Relevant Material. (Appellate Exhibit 1) The case was assigned to me on November 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on November 24, 2014, scheduling a hearing for December 17, 2014.

At the hearing, the Government offered two exhibits (GE 1 and 2). Applicant testified and presented exhibits (AE) 1 through 14. All exhibits and the documents attached to his answer to the SOR were admitted without objection and made part of the record. DOHA received the hearing transcript (Tr.) on January 7, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR factual allegations with explanations. His admissions are 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 63-year-old retired Navy officer and past entrepreneur. He was offered a position as a test engineer with a defense contractor and requires a security clearance to retain the position. Applicant married his wife in May 1979. She is currently unemployed, but seeking a job to assist Applicant paying his delinquent debts.

Applicant enlisted in the Navy in September 1976, and attended college while in the service. After completing his bachelor's degree, he attended Officer Candidate School and received a commission in 1985. While in the service, Applicant held sensitive positions and possessed a top secret clearance with access to sensitive compartmented information. There is no evidence of any security violations or security concerns while in the service. Applicant was honorably retired as a lieutenant in February 1996.

In preparation for his retirement, Applicant completed a master's degree in business administration in 1996. Additionally, he purchased a tax services business franchise. He was successful with this business, and between 1996 and 2009, he owned 30 franchises and had 400 seasonal employees working for him.

Applicant purchased his residence in April 2002 for \$750,000. (SOR 1.b) He claimed that when he purchased the home, it appraised for \$850,000. He acknowledged that it was somewhat expensive for his income. However, with his and his wife's combined incomes and a favorable mortgage loan, he was able to make his mortgage payments until he became unemployed. He also purchased his sister's residence for \$200,000 to help her when she became ill in 2007. It had a \$160,000 mortgage. (SOR 1.a) I note that SOR 1.b alleges Applicant owes \$402,561 resulting from his deficient home mortgage foreclosure. However, the evidence shows his actual debt is \$301,280.

In 2005, Applicant acquired a business partner to help him manage the tax services business and its financial requirements. He had problems with his business partner, and in 2009 he was forced to sell his business to his partner. Applicant was unemployed between September 2009 and November 2009. He worked part time in a tax business in another state from November 2009 until May 2010. He was again unemployed between May 2010 and December 2010.

Applicant spent most of his time between September 2009 and December 2010, seeking employment, but without success. Applicant stated that he never defaulted on any financial obligations before 2011. However, without a job he could not afford his \$6,000 mortgage payment, or the \$400 negative cash flow resulting from the property he purchased from his sister. Applicant attempted to sell, refinance, modify the mortgages, and to do a short-sale of his residence, but the bank refused to do so. Ultimately, the mortgages were foreclosed. At the time of its foreclosure in November 2012, Applicant had reduced the mortgage on his sister's home from \$160,000 to \$140,000. The house sold for \$105,000.

While unemployed, Applicant lived off his savings and sold some real estate properties he had accumulated as investment properties. He used the proceeds of one of the sales to pay off the mortgage of the house he currently lives in, and to pay off a delinquent credit card debt to a credit union. (AEs 2 and 3) Additionally, Applicant presented documentary evidence showing that he reduced a \$10,000 debt to a bank to \$6,000. He also was making payments to another retailer. I find that Applicant documented his efforts to repay his delinquent debts.

In December 2010, Applicant purchased another franchise and attempted to establish a new business. He did well during his first year in business. However, with the downturn of the U.S. economy, the business failed and he closed his franchise in October 2013. To support his family, pay debts, and make ends meet, Applicant has been holding three jobs. He became a part-time teacher (making \$75 a day), worked at a bowling alley (for \$9 an hour from November 2013 to present), and took a job as supervisor of elections for his city and the state. He also received some financial assistance from his sister. Notwithstanding, Applicant's income was insufficient to pay both his living expenses and his delinquent debts. Applicant was unable to repay the credit card charges he incurred trying to keep his business afloat. Applicant's 2013 income tax return indicates that he and his wife had a combined income of \$7,943.

At his hearing, Applicant acknowledged the four delinquent credit card accounts alleged in SOR ¶¶ 1.c through f. He opened those accounts around 1996, and used them to finance his business. He testified that most of the charges were related to his failed 2010 franchise. Applicant refused to file for bankruptcy protection because of his pride and because he wants to "do the right thing" and pay his debts. Applicant disclosed his financial problems in his 2014 SCA.

Applicant expressed sincere remorse for his financial situation. He recently sought employment with a government contractor to pay his delinquent obligations. He

believes that with his anticipated income he will be able to resolve his debts. He understands that he is required to maintain financial responsibility to be eligible for a security clearance.

Applicant's references consider him to be honest, reliable, and trustworthy. He also received high marks for his work ethic and exceptional leadership skills. A review of Applicant's credit reports shows that he is living within his financial means. There is no evidence of any additional delinquent debts. Applicant was candid and upfront during the security clearance investigation process.

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)

After 20 years of honorable service in the Navy, Applicant became a successful entrepreneur. After he was forced to sell his business in 2009, Applicant was unemployed and underemployed. Without sufficient earnings, two of his property mortgages were foreclosed, and he was unable to pay his credit cards. Because of the real estate and financial market downturns, he was unable to sell, refinance, modify the mortgages, or do a short sale of the properties. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) has partial applicability because Applicant's financial problems are recent. However, I find that his financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is applicable because his failed business and the U.S. financial and real estate downturns were beyond Applicant's control. After he was forced to sell his business in 2009, Applicant was unemployed and underemployed. He was unable to sell, refinance, modify the mortgage, or do a short sale of two properties. Two of his property mortgages were foreclosed, and he has delinquent credit cards resulting from a failed business. Applicant maintained communications with his creditors, continued to pay his delinquent debts in proportion to his financial resources, sold properties to pay debts, and took three jobs to generate income to support his family and pay his debts. AG ¶¶ 20(c) and (d) are partially applicable. There is no evidence he received financial counseling; however, the documentary evidence shows he paid other debts not alleged in the SOR.

Applicant is in a difficult financial situation. His current income is insufficient for him to establish a viable payment plan to pay his extensive debt. However, with the anticipated income from his job with a government contractor, he will have the financial means to address his debts. Applicant's credit report shows that he is living within his means, and there is no evidence of any additional delinquent debts.

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 retired from the Navy after 20 years of service. He held sensitive positions of leadership and responsibility, and possessed a top secret clearance. After his retirement, Applicant became a successful entrepreneur. Except for the SOR allegations, there is no other evidence of financial problems or any other security concerns. Applicant demonstrated that his financial problems resulted from circumstances beyond his control. Moreover, he demonstrated financial responsibility handling his financial problems. Applicant understands what is required of him to be eligible for a security clearance. 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.f:	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