



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



In the matter of:)	
)	
)	ISCR Case No. 14-01789
)	
Applicant for Security Clearance)	

Appearances

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

03/24/2015

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, and making payments consistent with his financial ability. Considering the circumstances of this particular case, Applicant’s financial problems do not show he currently lacks judgment, reliability, or trustworthiness. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 19, 2013. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on June 27, 2014.¹ Applicant answered the SOR on September 24, 2014, and requested a hearing

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.

before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to another administrative judge on October 20, 2014. Applicant was unavailable for his hearing, and the case was reassigned to me on December 1, 2014. DOHA issued the notice of hearing on December 11, 2014, scheduling a hearing for January 14, 2015.

At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified and presented three exhibits (AE) 1 through 3. AE 2 and 3 were received post-hearing. All exhibits were admitted without objection and made part of the record. DOHA received the hearing transcript (Tr.) on January 23, 2015.

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 49-year-old field service technician. He requires a security clearance to retain his job with a defense contractor. Applicant married his wife in 1995, and they have two children, ages 16 and 13. He graduated from high school and has completed some college courses. Additionally, he completed a U.S. Navy technical school, and received his journeyman electrician certification in 2008.

Applicant enlisted in the Army National Guard in 1983 and was honorably discharged in January 1985. He immediately enlisted in the U.S. Navy where he served as a submariner from 1985 to 1995. He was honorably discharged as an electronics technician second class (E-5). While in the Navy, Applicant possessed a top secret clearance. There is no evidence of any security violations or security concerns while in the service.

Applicant's job history indicates that after his service discharge, he worked in the semiconductor industry until 2003, when he was laid off. He then entered a five-year apprenticeship and worked as a journeyman electrician from 2003 to 2009. By 2009, he was earning around \$80,000 a year. He was laid off because of the downturn of the U.S. economy and was unemployed between August 2009 and December 2010.

Applicant was employed from January 2011 to October 2012. However, he was making only about \$33,000 a year. He was again laid off, and was unemployed between October 2012 and February 2013. Applicant was hired by his current employer, a government contractor, in February 2013.

In 1998, when he was earning about \$80,000 a year, Applicant and his wife purchased a home. The home was financed with a first mortgage (SOR ¶ 1.a) and a second mortgage (SOR ¶ 1.b). While employed, Applicant and his wife's combined incomes were sufficient to pay the mortgages, debts, and their living expenses. While

unemployed, Applicant used his savings and retirement accounts to pay the mortgages for some time. However, the lengthy periods of unemployment exhausted his savings and retirement accounts, and his mortgages and other credit accounts became delinquent. Applicant maintained contact with his creditors, but he did not have the financial means to pay his family's living expenses and his debts.

Applicant disclosed in his 2013 SCA that he had an outstanding debt to the IRS and a \$10,000 delinquent credit card account. Concerning the IRS debt, he explained that he and his wife always filed their income tax returns on time, but they made a mistake in their 1999 income tax return and acquired the debt. Shortly after they were notified of their debt, Applicant established a payment plan and has been making payments since.

In his response to the SOR, Applicant admitted the seven delinquent debts alleged in the SOR totaling over \$31,000. He would like to pay the debts, but lacks the financial means to support his family and pay all the debts at the same time. His wife has been continuously employed, and she took care of the home finances when Applicant was unemployed. Her income is \$33,000 a year. He and his wife were paying one debt at a time. However, both his and his wife's salary were garnished by creditors, and he had no choice but to file for bankruptcy protection because he could not afford the payments.

Applicant retained an attorney to help him file for bankruptcy protection and participated in the required financial counseling. The attorney expected that Applicant would be released of all his dischargeable debts in February 2015. The bankruptcy filing includes the debts alleged in SOR ¶¶ 1.c through 1.g. Applicant and his family have made lifestyle changes to save money and pay their debts. They no longer use credit cards, and only purchase their living necessities. They do not go out to eat, or go to the movies, or incur frivolous expenses. They are living from paycheck to paycheck.

Applicant presented documentary evidence to show that he has been paying the debt alleged in SOR ¶ 1.a through a wage garnishment. As of August 2014, he had paid close to \$7,000. He believes that as of his hearing date (January 2015), the debt was paid. Applicant intends to start paying the debt alleged in SOR ¶ 1.b when he no longer has to pay the debt alleged in SOR ¶ 1.a. The credit reports show that he has paid other debts not alleged in the SOR.

Applicant expressed sincere remorse for his financial situation. He believes that with his and his wife's income, and the pending bankruptcy discharge, he and his wife will be able to regain control of their financial situation. He understands that he is required to maintain financial responsibility to be eligible for a security clearance. 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 12 years of honorable military service, Applicant experienced substantial periods of unemployment and underemployment. Without sufficient earnings, his mortgages and credit accounts became delinquent, and he accumulated the seven debts alleged in the SOR totaling close to \$31,000. 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. Applicant’s financial problems were the result of his inability to pay the debts, and not because of his unwillingness to do so.

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 and ongoing. 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 fully applicable because his financial problems were caused by circumstances beyond his control. As a result of the U.S. financial and real estate downturns, Applicant was laid off and was unemployed and underemployed for significant periods. Applicant maintained communications with his creditors, continued to pay his delinquent debts in proportion to his financial resources, and used his savings and retirement accounts to pay his debts and to support his family. AG ¶¶ 20(c) and (d) are partially applicable. He received financial counseling through the bankruptcy process, and the credit reports show that he paid other debts not alleged in the SOR.

Applicant is in a difficult financial situation. He is living from paycheck to paycheck and his wife's income alone is insufficient for him to establish a viable payment plan to pay his debt. However, with the income from his current job and the anticipated bankruptcy discharge, he will have the financial means to address his debts and regain control of his financial situation. 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 served 10 years of active service. He held sensitive positions of responsibility and possessed a top secret clearance. After his separation from the service, Applicant was financially responsible until he was laid off and underwent periods of unemployment and underemployment. Applicant's financial problems resulted from circumstances beyond his control. He understands what is required of him to be eligible for a security clearance. With his current job income and the bankruptcy discharge, Applicant will regain control of his financial situation. 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.g:	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