



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01777

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to show that he has a track record of financial responsibility and that his financial problems are under control. He failed to mitigate the Guideline F (financial considerations) security concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 27, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant's eligibility for a clearance. On September 18, 2015, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹ Applicant answered the SOR on October 14, 2015, and elected to have his case decided on the written record, in lieu of a hearing.

¹ 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.

A copy of the Government's file of relevant material (FORM), dated December 4, 2015, was provided to him by transmittal letter that same day. Applicant received the FORM on December 13, 2015. He was allowed 30 days to respond to the FORM and submit any objections, corrections, and to provide material in extenuation and mitigation. Applicant did not respond to the FORM or submit any information. The case was assigned to me on March 3, 2013.

Findings of Fact

In his answer to the SOR, Applicant did not admit or deny any of the SOR allegations. He wrote comments on the SOR admitting that the creditor alleged in SOR ¶ 1.a was his mortgage lender, but denied he was delinquent on the account. He claimed that the accounts alleged in SOR ¶¶ 1.b through 1.f were paid. Additionally, he averred that SOR ¶¶ 1.c and 1.d alleged the same account, and that SOR ¶¶ 1.e and 1.f alleged the same account. Concerning SOR ¶ 1.g, he stated that his wife was in contact with the creditor making arrangements to pay the debt in full. In light of the comments made, I considered SOR ¶¶ 1.a through 1.f denied, and that Applicant admitted the factual allegations in SOR ¶ 1.g. Applicant's admission is incorporated herein as a finding of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 46-year-old pipefitter (shipbuilder) employed with a federal contractor. He graduated from high school in 1987. He then attended a technical-vocational school and received his completion certificate in 1991. Applicant married his wife in December 1998. He has a 12-year-old daughter.

Applicant's employment record shows that he worked as an auto detailer from 1989 to 2005. From 2005 to 2011, he worked as a plant supervisor. He was laid-off from his job at a concrete production plant when the plant closed, and was unemployed from November 2011 to May 2012. Applicant was hired by his current employer, a federal contractor, in May 2012. This is his first security clearance application.

Section 26 (Financial Record) of Applicant's September 2012 SCA asked him to disclose whether he had any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; and whether he was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts during the last seven years. Applicant answered "yes" and disclosed that he had suffered a "financial hardship." He disclosed five delinquent accounts in collection from the period 2007 through 2011. Applicant stated that he had ongoing payment agreements with two creditors, and promised to pay by December 2012 the remaining three delinquent accounts.

Applicant was interviewed by a government investigator in December 2012. He explained that he was laid-off from his job and was unemployed during a period of seven months. He received unemployment compensation, but the income was

insufficient to pay his family's living expenses and his accumulated debts. His financial problems were caused by his period of unemployment.

During the interview, Applicant was asked about two accounts owed to the same telephone services provider alleged in SOR ¶¶ 1.e and 1.f. He denied having any knowledge of these accounts, or having been contacted by anyone about them. He promised to investigate the accounts and pay them if they were his legal debts. Applicant claimed that unbeknown to him, his wife opened two accounts that were now delinquent, but that she was making payments on them. He denied having any knowledge of the 12 other delinquent accounts. He promised to investigate these accounts and pay them if they were his legal debts.

The subsequent security clearance background investigation revealed the seven delinquent accounts alleged in the SOR, totaling about \$20,000. The SOR allegations are established by Applicant's admission and the two credit reports attached to the FORM.

In his answer to the SOR (October 2015), Applicant claimed that he was current on his mortgage (SOR ¶ 1.a); that the accounts alleged in SOR ¶¶ 1.b, 1.c, and 1.e had been paid in full; that SOR ¶ 1.d was duplicative of SOR ¶ 1.c; and that SOR ¶ 1.f was duplicative of SOR ¶ 1.e. He also alleged that he contacted the creditor alleged in SOR ¶ 1.g to make payment arrangements.

Applicant presented no documentary evidence to support any of these claims. He presented no documentary evidence of debts paid, contacts with creditors, payment agreements made, or of any efforts to otherwise resolve his delinquent debts. The FORM credit reports do not support his claims that he paid the accounts. On the contrary, the credit reports show the debts as delinquent.

Applicant provided no information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget.

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)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant has a history of unresolved financial problems that date back to 2007-2011. He has seven delinquent accounts totaling around \$20,000 that have been outstanding since around 2007. His financial problems raise the applicability of the following financial considerations disqualifying conditions: AG ¶ 19(a) "inability or unwillingness to satisfy debts," and AG ¶ 19(c) "a history of not meeting financial obligations."

AG ¶ 20 lists five 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; and

(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.

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems are ongoing, and he presented insufficient evidence to show his debts were incurred under circumstances unlikely to recur.

Applicant was unemployed from November 2011 through May 2012. His period of unemployment could establish circumstances beyond his control that may have contributed or aggravated his financial problems. Applicant averred, in general terms, that his financial problems resulted from his period of unemployment. However, he presented little evidence to show how he acquired the debts, what efforts he took to remain in contact with his creditors, or what efforts he has taken since becoming employed to try to pay or resolve his delinquent debts.

Applicant's financial problems date back to 2007-2011. He submitted his SCA in 2012, and indicated that he was trying to resolve his financial problems. A government investigator asked Applicant about his delinquent debts and he promised to investigate

and resolve his financial problems. He was issued the SOR in September 2015 and the FORM in December 2015. Notwithstanding, Applicant failed to submit documentary evidence to show his efforts to contact creditors, establish payment plans, or of any payments made to resolve his delinquent debts. Moreover, he failed to provide any reasonable explanation for his failure to address his delinquent debts.

In sum, Applicant did not submit sufficient evidence to show he acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). He presented insufficient evidence to show that he initiated good-faith effort to repay overdue creditors or otherwise resolve his debts.

Furthermore, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current living expenses and debts. There is no information to show that he participated in financial counseling or that he follows a budget. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control. Applicant failed to establish that he has a track record of financial responsibility.

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). I have incorporated my comments under Guidelines F in my whole-person analysis.

Applicant receives credit for his years working for a federal contractor. This is his first SCA. Nevertheless, he failed to submit sufficient evidence to show that he has a track record of financial responsibility. He failed to mitigate the Guideline F security concerns.

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.g:	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