



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



In the matter of:)
)
) ISCR Case No. 15-01746
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2016

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 12, 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 14, 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 15, 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 30, 2015, was provided to him by transmittal letter that same day. Applicant received the FORM on January 5, 2016. 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 24, 2016.

Findings of Fact

Applicant admitted all the SOR factual allegations. Concerning SOR ¶ 1.b, he wrote a note in his answer to the SOR indicating that he was making weekly payments of \$50, but presented no documentary evidence to support his claim. Applicant's admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 41-year-old structural welder (shipbuilder) employed with a federal contractor. He graduated from high school in 1993. He married his first wife in 1998 and divorced in 2008. He married his present wife in 2010. Applicant has a 16-year-old son, and four stepchildren ages 14, 15, 15, and 22.

Applicant's employment record shows that he was employed between April 2002 and December 2003, and between March 2005 and May 2012. Applicant was hired by his current employer, a federal contractor, in May 2012, and has been continuously employed to present. This is his first security clearance application. He provided no explanation about the employment gap reflected on his 2012 SCA employment record (between December 2003 and March 2005).

Section 26 (Financial Record) of Applicant's September 2012 SCA asked him to disclose whether in the past seven years he had: failed to file or pay his federal and state taxes; 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 failed to file his 2009 federal income tax returns and to pay his taxes. He claimed that his work hours were reduced and he did not have the money to pay his taxes. He averred he paid his taxes in 2010.

Applicant also disclosed seven delinquent accounts in collection from the period 2008 through 2011, most of which were alleged in the SOR. Applicant explained in his 2012 SCA that his financial problems were caused or aggravated by his wife losing her job and being unemployed during an unspecified period, her ex-husband not paying child support (alleged arrearages of \$10,000), and his work hours being reduced during an unspecified period. He was the only breadwinner for the family, and his income alone was insufficient to pay their living expenses and accumulated debts, and he fell behind on paying his debts.

The subsequent security clearance background investigation revealed the 13 delinquent accounts alleged in the SOR, totaling over \$34,000. The SOR allegations are established by Applicant's admission and the two credit reports attached to the FORM.

In his 2012 SCA and in his answer to the SOR (October 2015), Applicant claimed that he had paid two debts, and was trying to work out payment agreements with numerous creditors. Applicant presented little documentary evidence to support any of these claims. I note, however, that the FORM credit reports (submitted by the Government) show that Applicant paid 13 accounts not alleged in the SOR - one for less than originally owed, and he also paid a judgment that was released in April 2012.

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. Applicant failed to present documentary evidence of debts paid, contacts with creditors, payment agreements made, or of any efforts to otherwise resolve his delinquent 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)

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 from 2008 to present. He has 13 delinquent accounts totaling over \$34,000 that have been outstanding since around 2008. 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 claimed his wife lost her job for an unspecified period, that his work hours were reduced for an unspecified period, and that his wife was not receiving child support from her ex-husband. He averred that his financial problems resulted from these events. These periods of unemployment and underemployment could establish circumstances beyond his control that may have contributed or aggravated his financial problems. 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 to try to pay or resolve his delinquent debts.

Applicant's financial problems date back to 2008. He submitted his SCA in 2012, and indicated that he was trying to resolve his financial problems. He was issued the SOR in September 2015 and the FORM in December 2015. Based on the FORM credit reports, he paid or resolved some non-SOR debts. Notwithstanding, Applicant failed to submit sufficient documentary evidence to show his efforts to contact creditors, establish payment plans, or of any payments made to resolve the delinquent debts alleged in the SOR. He failed to provide a reasonable explanation for his failure to address his delinquent debts after he was hired by his current employer and made aware of the Government's security concerns about his financial problems.

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 a 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.m:	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