



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



In the matter of:)
)
) ISCR Case No. 09-06893
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has nine outstanding debts that became delinquent between 2003 and 2012. He failed to submit sufficient documentary evidence to establish financial responsibility in the handling of his financial obligations. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 25, 2011. On February 13, 2013, 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 May 2, 2013, and requested a hearing before an administrative judge.

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.

The case was originally assigned to two other administrative judges. Applicant was not able to appear at a hearing in June 2013. (Appellate Exhibit 1) The case was assigned to me on June 17, 2013. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on June 20, 2013, scheduling a hearing for July 24, 2013.

At the hearing, the Government offered exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified and presented six documents for my review at the hearing. (A picture of Applicant receiving a community service award; a letter from a car manufacturer, dated April 15, 2013, stating that the company was aware Applicant may have been the subject of identity theft; Applicant's college transcripts showing he finished the semester with a 3.68 GPA; Applicant's resume; a certificate for completing a production planning course; and a certificate for completing the shipbuilding apprenticeship school.)

Applicant only brought original documents to his hearing. Although I reviewed the documents, no documents were marked or admitted at the hearing. I left the record open until August 9, 2013, to allow Applicant time to supplement the record. He promised to submit copies of the six documents. By email dated July 31, 2013, Applicant contacted Department Counsel asking for a mail address, which was provided to him that same date. (Appellate Exhibit 2) He failed to submit any documents. DOHA received the hearing transcript (Tr.) on August 1, 2013.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 1.e, 1.g, and 1.h, with explanations. He denied the allegations in SOR ¶¶ 1.c, 1.d, 1.f, 1.i, and 1.j. His admissions are incorporated herein 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 37-year-old employee of a defense contractor. He has never been married, and has no children. He served on active duty in the U.S. Navy from September 1998 to June 2001, and possessed access to classified information at the secret level. He was discharged from the service pursuant to an administrative board for misconduct. (In October 2000, he received non-judicial punishment for the forgery of a naval document.) His service was characterized as "under other than honorable conditions." He is in the process of requesting an upgrade of the characterization of his discharge. Following his discharge, Applicant worked for a moving company between 2003 and 2004. He was hired by his current employer, a government contractor, in June 2004.

Applicant attended college and received a Bachelor of Science degree in business management in December 2010 (*magna cum laude*). While in college, he also completed his shipbuilding apprenticeship school. Applicant is currently working on a master's degree in systems engineering. He has a 3.56 GPA.

Applicant disclosed in his January 2011 SCA (Section 26 – Financial Record) that he had financial problems, which included delinquent loans, judgments, wage garnishments, delinquent debts, and debts over 90 and 180 days delinquent. The background investigation addressed his financial problems and revealed the 10 delinquent debts alleged in the SOR, totaling over \$30,000. The SOR debts are established by the credit reports submitted by the Government and by Applicant's testimony.

On March 3, 2011, Applicant was interviewed by a government background investigator and questioned about the delinquent debts alleged in the SOR. Applicant acknowledged some of the SOR debts, disputed some, and claimed no knowledge of other debts. The status of the alleged SOR debts is as follows:

SOR 1.a (\$600) – Applicant owed his landlord for past-due rent and a damaged door. He claimed he paid his share of the rent, but his roommates failed to pay. The landlord obtained a judgment against Applicant in November 2012. Applicant claimed he did not know about the judgment until February 2013. He claimed he contacted the creditor in 2013, and settled the debt for \$400, of which he owes \$100. Applicant failed to present documentary evidence of any contact, agreement, or payments made to the creditor.

SOR 1.b (\$590) – Applicant received medical treatment and failed to pay his co-payment. The creditor contacted him, and Applicant claimed he disputed the debt. The creditor filed a law suit against Applicant, who ignored the law suit. The creditor obtained a judgment against Applicant in July 2009. Applicant claimed he contacted the creditor and established a payment agreement in 2013. He failed to present documentary evidence of any contacts, agreements, or payments made to the creditor.

SOR 1.c (\$80 – debt from 2005-2006); SOR 1.d (\$54 – debt from 2003); SOR 1.e (\$229 – debt from 2003); and SOR 1.f (\$50 – debt from 2002-2003) - These are delinquent medical debts. Applicant claimed he paid three of these debts, and made a payment agreement for the last one in February 2013. He failed to present documentary evidence of any contacts, agreements, or payments made to the creditors.

SOR 1.g (\$348) - This is a delinquent credit card debt from 2008. Applicant claimed he offered to settle the account for \$138 in 2012. He failed to present documentary evidence of any contacts, agreements, or payments made to the creditor.

SOR 1.h (\$1,121) - This is a delinquent cellular service account from 2007. Applicant claimed his phone was stolen in 2007, and he did not make the phone calls. He initially testified he offered to settle the account and set up a payment plan. Later, he testified he is still disputing the debt because these were not his phone calls. He failed to present documentary evidence of any contacts with the creditor, agreements, payments made, or disputes filed with the creditor.

SOR 1.i (\$22,391) – Applicant cosigned a car loan for a girlfriend in 2007-2008. Apparently, she was involved in an accident and stopped paying the loan. Applicant claimed he believed the car was returned to the dealer, and was not aware the debt was delinquent until he was contacted by the creditor in 2010. Applicant believes it is not fair for him to pay the debt, because he was not the owner of the car. However, he stated he would pay the debt to clean his credit. He failed to present documentary evidence of any contacts, agreements, or payments made to the creditor.

SOR 1.j (\$4,891) – One of Applicant's girlfriends cashed a fraudulent check against his bank account. The bank obtained a judgment against Applicant. However, he was able to establish that he was not involved in the fraud. Applicant's documentary evidence established that the creditor dismissed the judgment and refunded the garnished money to him. (See document attached to Applicant's answer to the SOR.)

Applicant provided numerous reasons to justify his failure to address the debts alleged in the SOR: He did not pay them because he had accumulated too many debts and was paying other debts first. He forgot about some of the debts, and he had not reviewed his credit report recently. In 2008, his girlfriend and her two children moved in with him, and his income was not sufficient to pay for their day-to-day living expenses and his old debts.

Applicant testified that he wants to pay his delinquent debts. He needs his security clearance to retain his job to be able to pay his debts. He claimed that he is trying hard to get his finances in order. He believes that he is making a diligent effort to clean up his credit. He obtained a credit report to identify his delinquent debts, and claimed to be contacting his creditors to set up payment plans. Applicant believes that his current financial situation is stable. He stated that his present earnings allow him to meet his current financial obligations. Applicant's personal financial statement, dated August 2012, indicated that his net monthly income was around \$3,000. His monthly net remainder was around \$800, after paying \$2,210 in monthly expenses.

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. He presented no documentary evidence to show he has received financial counseling. Applicant testified he recently started an electronic budget, but did not present the budget document. He also claimed that his mother has been lending him money to pay some of his delinquent debts. He presented no documentary evidence to support any of his claims.

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 nine delinquent debts alleged in the SOR, totaling over \$25,000, some of which have been delinquent since 2003. 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.

SOR 1.j is not established by the evidence. The creditor dismissed the judgment and reimbursed Applicant. I find for Applicant on this allegation.

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.

Applicant has been fully employed with a government contractor since May 2004. He has a net monthly income of around \$3,000. Outside of a garnishment of wages to pay one of his debts, he presented no documentary evidence of any debt payments, contacts with creditors, disputes, or that he otherwise attempted to resolve his debts. Additionally, he has not participated in financial counseling or has a budget.

Applicant was interviewed in Mach 2011 by a government investigator, and questioned about his financial problems. Even though he was placed on notice about the government's concerns about his financial problems, he failed to make a convincing effort to resolve his delinquent obligations.

Considering the evidence as a whole, I find that none of the financial considerations mitigating conditions apply. Applicant's financial problems are ongoing, and he owes a large debt. I considered that Applicant acquired additional obligations when his girlfriend and her children moved in with him. Notwithstanding, Applicant's favorable evidence is insufficient to show financial responsibility with respect to any of

the debts alleged in the SOR, or that he attempted in good faith to establish payment plans or otherwise resolve his delinquent debts.

Applicant's lack of financial responsibility shows he is not aware of what is required of him to establish eligibility for a security clearance. In light of all available evidence, Applicant's unresolved debts 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 has worked for a defense contractor since 2004. His academic achievements show he is a smart and dedicated person with potential. He has nine outstanding debts that became delinquent between 2003 and 2012. 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.i:	Against Applicant
Subparagraph 1.j:	For 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