



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



In the matter of:)
)
) ISCR Case No. 11-02441
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Martin P. Hogan, Esq.

11/26/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of financial problems dating back to 1991. Some of his financial problems were caused or aggravated by circumstances beyond his control, and he recently started making some efforts to resolve his financial problems. Notwithstanding, the evidence fails to establish that Applicant showed financial responsibility in the acquisition and resolution of his delinquent debts. He also failed to timely file his income tax returns and to pay his taxes. It is too soon to conclude that Applicant has a viable plan to resolve his delinquent debt, and that he is in control of his financial situation. The record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 18, 2009. On April 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F

(Financial Considerations).¹ Applicant answered the SOR on May 12, 2012, and requested a hearing before an administrative judge.

The case was assigned to me on August 8, 2012. DOHA issued a notice of hearing on August 29, 2012, scheduling a hearing for September 19, 2012. At the hearing, the Government offered exhibits (GE) 1 through 13. Applicant testified, and submitted exhibits (AE) 1 through 7. AE 7 was received post-hearing.² All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on September 26, 2012.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.j, 1.l through 1.o, and 1.r. He denied SOR ¶¶ 1.k, 1.p, and 1.q. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his demeanor and testimony, I make the following additional findings of fact.

Applicant is a 55-year-old program analyst. He lost his civil service position with a government agency when his security clearance was withdrawn because of the pending SOR allegations. Applicant is being sponsored for his security clearance by the same government contractor he worked for before he was hired for his civil service position. (Appellate Ext. 2, 3, and 4)

Applicant married his first spouse in May 1977, and they divorced in November 1981. He has two children of this marriage. He married his second spouse in April 1996, and they were divorced in May 1997. He married his current spouse in February 1999, and they have been separated for eight years. Applicant has a total of seven grown children. (GE 12)

Applicant served in the U.S. Army on active duty from February 1977 until February 1987. After his honorable discharge, he served in the National Guard for one year, and then worked one year for a government contractor. In 1990, he joined the National Guard. In 1991, he was hired as an active duty National Guardsman and served on active duty until he was honorably retired in February 2003. His military occupational specialties were finance and armor, and he retired with the rank of master sergeant (E-8). He was credited with a total of 26 years of active duty service.

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (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.

² Applicant mislabeled AE 7. He did not include document “#9” in AE 7. See Appellate Exhibit 1 (email from Applicant’s attorney, dated November 8, 2012, addressing this issue).

While in the service, Applicant received numerous awards and decorations, including among others the Army Meritorious Service Medal, the Army Commendation Medal, and the Army Good Conduct Medal (3). At his hearing, he presented several certificates of appreciation for a job well done. He was selected by the then Army Chief of Staff to participate in a training and development panel. Additionally, he received the Care Giver Award from the governor of his state for taking care of his mother for 21 years. Applicant's mother suffered from serious medical problems and was dependent on Applicant's care and financial support. Some of her medical expenses were covered by the military (she was Applicant's dependent) and her Social Security benefits. Applicant was financially responsible for any remaining medical expenses. Applicant's mother passed away in July 2009.

After his retirement, Applicant worked a period of three months for a private company before he was laid off. He was unemployed for two months. From August 2003 until January 2009, he worked for a government contractor. He was laid off as a result of the contractor's reorganization, and he was unemployed for a period of four months. He worked for a government contractor from May 2009 until November 2009 as a budget analyst. In November 2009, he was hired as a government employee performing the same duties. Applicant was laid off in September 2010, when he lost his security clearance as a result of the pending financial considerations concerns. He has been unemployed since September 2010. Applicant possessed a security clearance at the secret level from 1977 until September 2010. There is no evidence that he ever compromised or caused others to compromise classified information. Applicant testified he has no criminal record, and a clean driving record.

Applicant claimed he was awarded a bachelor's degree in June 2006. However, he stated in his 2009 SCA that he needed additional courses to receive his degree. He completed training as a compliance agent, personal protection specialist, private security training, and he received other specialized training while serving in the Army and the National Guard.

In his November 2009 SCA, Applicant disclosed that he had filed for Chapter 13 bankruptcy protection once (to save his home from foreclosure), and that in 2008, he had a \$400,000 mortgage foreclosed and the property repossessed. The subsequent background investigation revealed that Applicant filed for bankruptcy protection five times. He filed for Chapter 13 bankruptcy protection in February 1991 (dismissed); October 1992 (discharged in March 1996); September 2007 (dismissed in November 2007); and in December 2007 (converted to a Chapter 7 in November 2008, and dismissed in April 2009). He filed for Chapter 7 bankruptcy protection in January 2005 (discharged in May 2005). Additionally, the investigation revealed nine delinquent consumer credit accounts, totaling over \$15,000, and two federal tax liens, totaling approximately \$45,000. The total owed for the first and second mortgage foreclosed was over \$485,000. Applicant failed to disclose in his 2009 SCA four of his bankruptcy filings, the nine delinquent consumer credit accounts, the two federal tax liens, and that he failed to timely file income tax returns, and pay his income tax for tax years 2003 through 2006.

Concerning his February 1991 bankruptcy, Applicant explained that his then fiancé moved away with their daughter and left him with the household debts. He was caring for two of his sons and his mother who was in a wheelchair. His earnings were not sufficient to pay for his day-to-day living expenses and his accumulated debts. He filed for Chapter 13 bankruptcy protection; however, he asked for the filing dismissal when he returned to active duty in April 1992.

Applicant filed again for Chapter 13 bankruptcy protection in October 1992. He explained that his vehicle was repossessed erroneously and he filed for bankruptcy protection to prevent losing the vehicle. Applicant claimed that although he was making payments on the vehicle, the bank was not crediting the payments properly. In March 2006, the bankruptcy court discharged him of financial responsibility for his dischargeable debts.

In January 2005, Applicant filed for Chapter 7 bankruptcy protection, and he was discharged of financial responsibility for his dischargeable debts in May 2005. Applicant explained that after his 2003 retirement, he had trouble finding a job. To protect his credit, he sold his home to his father-in-law with the understanding that it would be later sold back to him. Applicant used the proceeds of the sale (his equity) to pay for his family's day-to-day living expenses. Later, his father-in-law refused to transfer the property back to Applicant, and obtained an \$8,000 garnishment of wages against Applicant for pass-due mortgage payments Applicant failed to pay. To avoid paying what he considered was an illegal garnishment, Applicant filed for bankruptcy protection.

In 2006, Applicant purchased a home for \$500,000 using an adjustable rate mortgage (ARM). He was unable to refinance the house because the appraised value was below the balance owed. When the mortgage rate increased, he was unable to make the mortgage payments. Applicant also averred that his financial problems were aggravated because he paid about \$7,000 in legal fees for his son. In December 2007, Applicant filed for Chapter 13 bankruptcy protection trying to force the mortgage holder to lower the interest rate and to modify the mortgage. The filing was converted to a Chapter 7 around November 2008, and dismissed in April 2009.

Applicant's mortgage was foreclosed and the house sold in 2008. Applicant testified that he received an IRS Form 1099 from the mortgage company for the difference in the sale price and the amount owed. Applicant did not present documentary evidence to show that the mortgage companies forgave or cancelled his debt after the sale of his house. He also failed to present documentary evidence showing the total debt owing on his first and second mortgages resulting from the foreclosure.

Applicant did not timely file his income tax returns or pay his taxes for tax years 2003, 2004, 2005, and 2006. He did not file his income tax returns because he did not own a house and had no deductions to write off. He became indebted to the Internal

Revenue Service (IRS) in the approximate amount of \$45,000 for back taxes, penalties, and interest. The IRS filed two tax liens against Applicant, and started to levy on Applicant's wages in 2009-2010. (SOR ¶¶ 1.i and 1.j) Apparently, Applicant filed his 2003-2006 income tax returns and requested a payment arrangement with the IRS in 2009-2010. He is using the services of the Tax Defense Network to help him resolve his problems with the IRS.

Based on the evidence presented, the status of the remaining delinquent debts alleged in the SOR is as follow:

SOR ¶ 1.f (\$495). Applicant opened a new account with the creditor and transferred the delinquent \$495 to the new account. As of September 2012, he owed \$523, after making a payment of \$150.

SOR ¶ 1.g (\$604). Applicant returned the creditor's satellite TV equipment. As of September 2012, he owed \$54.

SOR ¶¶ 1.h (\$1,779) and 1.k (\$9,852). In March 2010, Applicant retained the services of a credit restoration company to dispute some debts and clean his credit report of inaccuracies. On September 24, 2012, Applicant retained the services of a debt resolution company to help him resolve the debts alleged in SOR ¶¶ 1.g, 1.h, and 1.k. He presented no documentary evidence to show payments made to either of the creditors or to the debt resolution company.

SOR ¶¶ 1.l (\$1,241) and 1.m (\$363). Applicant claimed he contacted both creditors after his hearing and established payment plans that will start in October 2012. He presented no documentary evidence of those payment agreements, or of payments made to either of the creditors.

SOR ¶¶ 1.n (\$301) and 1.o (\$122). Applicant initially claimed these were not his debts. He later acknowledged the debts were his. After his hearing, Applicant claimed that he had settled and paid both debts on January 11, 2011. He failed to present documentary evidence of any payments made.

SOR ¶ 1.p (\$526). Applicant claimed he disputed this debt because it should have been paid by his then employer's medical insurance company. He presented no documentary evidence to show that he referred the claim to his prior employer.

In sum, of the 13 delinquent debts alleged in the SOR, two were resolved after the hearing (SOR ¶¶ 1.f and 1.g). He failed to present documentary evidence to show that he resolved SOR ¶¶ 1.h, 1.i, 1.j, 1.l, 1.n, 1.p, 1.q, and 1.r. He claimed to have a payment agreement with the IRS, but presented no documentary evidence of it. He also claimed to have received an IRS 1099-C, but failed to present documentary evidence of the document or about the total owed to the creditor. Most of his efforts to contact creditors started after he was confronted by a government investigator about his financial problems in December 2009. Applicant presented little documentary evidence

of contacts with creditors or payments made before December 2009. Most of his payment agreements were scheduled to start after his hearing.

Applicant claimed circumstances beyond his control prevented him from paying his delinquent debts. He explained that his financial problems were caused by his periods of unemployment and underemployment, separations and divorces, and his role as the sole provider for two of his children and his mother. He incurred additional expenses paying for his mother's medical expenses. Applicant testified that he was making payments on other small debts that were not alleged in the SOR because they were paid. He believes he did all that he could do based on his circumstances.

After the foreclosure of his house in 2008, Applicant entered into a lease-to-purchase agreement for a large house (5,900 square foot, a 1,700 square foot basement, on six acres). (Answer to the SOR.) He also indicated that at some point after 2008, he entered into a contract to build a large house on prime real estate with a value of \$525,000. He claimed he started to resolve his delinquent debts before he was confronted by the government investigator because of his anticipated house purchase. (GE 12) Notwithstanding, except for retaining the services of the credit restoration company to dispute some debts, Applicant presented little evidence of contacts with creditors, payments made, or of other efforts to resolve his financial problems short of repeatedly filing for bankruptcy protection.

After he was terminated from his job in September 2010, Applicant did not have the financial means to pay his delinquent debts more aggressively. Applicant lives with his girlfriend and they follow a budget. He has participated in financial counseling through the bankruptcy process. He considers himself to be a patriot. He dedicated his life to serve the United States as a soldier and a civil service employee. He believes that his years of service to the United States establish his loyalty, trustworthiness, and good judgment. He would like to continue his service to his country and to resolve his delinquent financial obligations. He needs his security clearance to retain his job. He believes that with his job, he will have the ability to pay all of 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.

Applicant has a history of financial problems that date back to 1991. His financial problems continue to present as evidenced by his delinquent debt, totaling about \$68,000 without considering what he owes for his two foreclosed mortgages. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts and AG ¶ 19(c): a history of not meeting financial obligations.

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's favorable evidence fails to fully establish the applicability of any mitigating condition. His financial problems are ongoing, he has extensive delinquent debt, and the evidence fails to show that he acted responsibly in the acquisition of the debts, or that he acquired the debt under such circumstances that the behavior is unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's periods of unemployment and underemployment, divorces and separations, his mother's medical condition, and his role as the sole provider for his two sons and mother are circumstances beyond his control that contributed to his financial problems. Notwithstanding, his favorable evidence is not sufficient to show that he acted responsibly in the acquisition of his debts or addressing his financial obligations.

Applicant has a history of acquiring large debts and filing for bankruptcy protection when he cannot afford them. Notwithstanding his delinquent debts and his two tax liens, between 2008 and 2011, Applicant attempted to acquire expensive real estate properties without first resolving his delinquent debts. AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns.

Applicant presented little evidence of efforts to resolve his delinquent debt until after he was confronted by a government investigator about his financial problems in 2009. I considered Applicant's recent efforts (September 2012) to resolve his debts by establishing payment plans with some creditors. However, questions remain about the viability of such payment arrangements since most payments were scheduled to start in

the future. Questions also remain about Applicant's current financial situation and his ability and willingness to continue making his ongoing payments. He has been unemployed since he lost his job in September 2010 after the withdrawal of his security clearance. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility. AG ¶ 20(d) partially applies, but does not fully mitigate the financial concerns.

AG ¶ 20(c) applies because Applicant participated in financial counseling. However, it does not mitigate the financial considerations concerns. Considering the number of debts and the aggregate total of the debts, I cannot find that there are clear indications that his financial problems are being resolved or under control. AG ¶ 20(e) partially applies since Applicant disputed some of his debts. However, it is not clear whether he had a reasonable basis for the disputes. The remaining mitigating condition (AG ¶ 20(f)) is not applicable to the facts of this case.

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 is an honorably retired master sergeant with over 26 years of service. He possessed a security clearance from 1977 until 2010 without any problems or concerns, except for the current financial considerations concerns. He is a loving son and father. While in the service, he held important positions that required technical proficiency, knowledge, and financial responsibility. Some of Applicant's financial problems were caused or aggravated by circumstances beyond his control, and he recently started making some efforts to resolve his financial problems.

Notwithstanding, the record evidence fails to establish that Applicant showed financial responsibility in the acquisition and resolution of his delinquent debts. Because of his extensive financial background and years in the service holding a security clearance, Applicant knew or should have known about the importance of maintaining financial responsibility and about the Government's financial considerations concerns. Moreover, Applicant's unexplained failure to disclose in his 2009 SCA the full extent of his financial problems adversely impacts on his credibility and evidence of extenuation and mitigation.³ Considering the record as a whole, it is too soon to conclude that

³ The SOR did not allege that Applicant falsified his 2009 SCA. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

Applicant has a viable plan to resolve his delinquent debt, and he is in control of his financial situation. At this time, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance.

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.e:	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraphs 1.h-1.r:	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

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR behavior accordingly.