



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



In the matter of:)
)
) ISCR Case No. 11-03286
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

05/05/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to establish financial responsibility. Moreover, he falsified his security clearance application when he failed to disclose his delinquent debts. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 15, 2010. On October 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ Applicant answered the SOR on December 20, 2011, and requested a hearing before an administrative judge. The case was assigned to me on January 23, 2012.

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.

DOHA issued a notice of hearing on January 30, 2012, convening a hearing for February 24, 2012. Applicant requested a continuance on February 21, 2012. A second notice of hearing was issued on February 22, 2012, convening a hearing for March 9, 2012. At the hearing, the Government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and submitted no exhibits. I allowed Applicant an additional period after the hearing to supplement the record, but he did not take advantage of the opportunity. DOHA received the hearing transcript (Tr.) on March 19, 2012.

Procedural Issue

At the hearing, Department Counsel moved to strike SOR ¶ 1.o, because it duplicated the facts alleged in SOR ¶ 1.a. Applicant did not object, and I granted the motion.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.f, 1.i through 1.l, and 2.a. He denied SOR ¶¶ 1.g, 1.h, and 1.m through 1.o. His admissions are incorporated into the findings of fact. After a thorough review of all the evidence, and having observed Applicant's demeanor and considered his testimony, I make the following additional findings of fact.

Applicant is a 28-year-old computer software engineer working for a government contractor. He was awarded a bachelor's degree in engineering, with concentration in computer engineering, in May 2006, and a master's degree in technical and program management in December 2010. Applicant has never been married. He is currently engaged to the mother of his four-year-old daughter.

Applicant started working full time for government contractors in May 2006, soon after he graduated from college. From May 2006 until October 31, 2010, he worked for three different government contractors. Between 2006 and August 2010, he earned between \$52,000 and \$58,000 a year, increasing his income over time. From August 2010 until October 31, 2010, he earned around \$77,000 a year. In October 2010, he was laid off from his job, and he was unemployed for a period of three months. He was hired by his current employer on January 15, 2011. He is currently making approximately \$80,000 a year.

At his hearing, Applicant stated that his monthly expenses are approximately \$2,700; however, he believes that after paying his living expenses and some debts, he clears around \$600 to \$700 a month. He does not have a savings account. Applicant was granted a secret clearance in July 2006, which he has held without any security incidents or concerns. His current employer requested an upgrade of his clearance for Applicant to work in certain projects. There is no evidence to show that Applicant has compromised or caused others to compromise classified information.

Applicant explained that his financial problems are the result of several factors, including the commuting expenses associated with him living in one state and working in another, the unexpected birth of his daughter and the resulting increase in living expenses associated with supporting his fiancé and daughter, providing \$500 in financial assistance to his mother from January 2011 until October 2011, and being unemployed during three months. Applicant has had financial problems since he was in college. He attempted to resolve his financial problems by continuously looking for better paying jobs. He needs his security clearance to keep his job and further his career. Applicant believes he has been doing all that he can do to resolve his financial problems considering his circumstances.

Concerning the alleged delinquent debts, Applicant admitted that he has made little effort to contact his creditors or to resolve his debts since they became delinquent, with some exceptions. In 2008, he contacted the Department of Education to ask questions about the debts alleged in SOR ¶¶ 1.f, 1.g, and 1.h. Apparently, in 1998, the creditor started to garnish Applicant's income tax refunds and his salary. Applicant admitted that he owes the Department of Education for his student loans, but he disagrees with the total debt owed. His income tax refunds are currently being garnished, but since he recently changed jobs his salary is not currently being garnished.

Applicant paid the debt alleged in SOR ¶ 1.m. (GE 4) He claimed that he paid the debts alleged in SOR ¶¶ 1.i and 1.n, but he failed to present documentary evidence to support his claim. Applicant also noted that he paid or brought current two other credit card accounts not alleged in the SOR, and that he brought his car note current. As of his hearing date, Applicant had not received any financial counseling. He claimed that his fiancé keeps a family budget. She moved in with Applicant in November 2011.

In October 2010, Applicant submitted the pending SCA. In response to Section 26 (Financial Record) (asking whether he had any debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; had been over 180 days delinquent on any debt; or was currently over 90 days delinquent on any debt), Applicant answered "No." He failed to disclose the delinquent debts alleged in the SOR, some of which have been delinquent since he was in college.

During his December 2010 interview with a Government investigator, Applicant stated that he did not disclose the delinquent debts because either he was not aware of the debts, or he did not believe the debts were delinquent. At his hearing, he admitted he knew some of the debts were delinquent, but he did not disclose the debts in his SCA because he did not know who the current creditors were, how much he owed, and when the debts became delinquent. Applicant expressed remorse for his omissions in the SCA, and for his financial problems. He testified that he knew his bad decisions led, in part, to his financial problems and to his failure to disclose the delinquent debts in the SCA.

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 admitted 13 of the delinquent debts alleged in the SOR, totaling over \$35,000, that have been delinquent for a number of years, some of them since he was in college. (He disputed the total owed in one of his student loans.) The debts are confirmed by the evidence submitted. AG ¶ 19(a): “inability or unwillingness to satisfy debts,” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

AG ¶ 20 provides 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.

Applicant's behavior was frequent as demonstrated by the number of debts, the aggregate total of the debt, and the period they were delinquent. His financial problems are ongoing. AG ¶ 20(a) is not applicable.

I considered Applicant's commuting expenses (although this is not a circumstance beyond his control), the unexpected birth of his daughter and the resulting increase in living expenses associated with supporting his new family, his financial assistance to his parents, and his unemployment for a period of three months as circumstances that contributed to his inability to pay his debts. Notwithstanding, these circumstances do not fully mitigate the financial considerations concerns.

Applicant has been fully employed with different government contractors since 2006. His employment progression shows a yearly salary increase from \$52,000 to \$80,000 in his current position. Notwithstanding, Applicant presented little evidence of efforts to contact his creditors, payments made, or efforts to otherwise resolve his delinquent financial obligations. Applicant's evidence is insufficient to establish that he was responsible in the acquisition of his debts, or addressing his delinquent debts.

Applicant failed to present evidence of good-faith efforts taken to bring under control his delinquent debts. Additionally, as of his hearing date, he had not received any financial counseling. At his hearing, Applicant disputed some debts (or the total owed), but he failed to provide documentary evidence to support his dispute, or to provide evidence of his efforts to resolve any disputes with his creditors. Financial considerations mitigating conditions AG ¶¶ 20 (b), (c), (d), and (e), do not apply. The remaining mitigating condition, AG ¶ 20 (f), is not pertinent to the facts of this case. Considering the evidence as a whole, serious questions remain about Applicant's ability to satisfy his debts and meet his financial obligations.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant deliberately failed to disclose in his October 2010 SCA the delinquent debts alleged in the SOR, some of which have been delinquent since he was in college. His testimony and admissions establish that he was well aware of his delinquent debts. His excuses for his failure to disclose the delinquent debts raise more concerns about Applicant's truthfulness and judgment.

Applicant's deliberate falsification of his 2010 SCA triggers the applicability of disqualifying condition AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

After considering all the AG ¶ 17 mitigating conditions, I find none apply. Applicant's falsification is a recent, serious offense (felony-level).²

² See 18 U.S.C. 1001.

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 considered Applicant's age, his years working for government contractors while possessing a security clearance, and his testimony about the cause for his financial problems.

Notwithstanding, Applicant failed to establish financial responsibility in the acquisition of his debts, or in his efforts to resolve his delinquent debts. His evidence is not sufficient for me to conclude that he is in control of his financial situation. Moreover, Applicant falsified his SCA. In light of his age, education, experience working for government contractors, and his years holding a security clearance, his behavior raises doubts about his judgment and about his ability to comply with the law and regulations.

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.l and 1.n:	Against Applicant
Subparagraphs 1.m and 1.o:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge