



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



In the matter of:)
)
) ISCR Case No. 11-06108
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant neglected his finances when he took his current job and was deployed to Afghanistan. He recently paid six delinquent debts, and promised to resolve the two remaining debts in the near future. There are clear indications that his financial problem is being resolved and is under control. The current security clearance process has made him fully aware that he is required to maintain financial responsibility to retain his eligibility for a security clearance, and ultimately his job. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 9, 2010. On March 26, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (financial considerations).¹

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.

Applicant answered the SOR on May 12, 2012, and elected to have his case decided on the written record in lieu of a hearing.

A copy of the file of relevant material (FORM), dated October 25, 2012, was provided to him by transmittal letter dated December 21, 2012. Applicant received the FORM on January 20, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. He timely responded to the FORM on January 22, 2013, and provided additional information that was made part of the record. The case was assigned to me on February 11, 2012.

Findings of Fact

Applicant admitted all the factual allegations in the SOR, except for SOR ¶ 1.c, which he denied. His admissions are incorporated as findings of fact. After a thorough review of the evidence of record, including his answers to the SOR, the FORM, and a DOHA interrogatory, I make the following additional findings of fact.

Applicant is a 32-year-old interpreter employed by a defense contractor. He was born in Afghanistan, and immigrated to the United States in 1987. He graduated from high school in 1999, and received his associate's degree in 2004. He has never been married and has no children. Applicant became a naturalized U.S. citizen, and changed his given name to his current name in February 2009.

Applicant has been employed with numerous companies from 2000 to present. His 12-year work history indicates two periods of unemployment from April to June 2007, and from March to September 2008. He has been steadily employed since September 2008. He was hired by his current employer, a government contractor, in August 2010. He provides interpretation services to U.S. assets deployed to Afghanistan. This is his first security clearance application. However, Applicant indicated that in 2000, another U.S. agency granted him access to secured areas.

Applicant disclosed in his August 2010 SCA (Section 26 – Financial Record) that he had financial problems, which included delinquent debts in collection or charged off, and debts over 180 days delinquent. The subsequent background investigation addressed his financial problems and revealed the eight debts alleged in the SOR, totaling approximately \$23,584. All SOR debts are established by his admissions, and they are corroborated by the evidence, including SOR ¶ 1.c (alleging a \$2,240 delinquent debt), which he denied.

In his February 2012 answer to interrogatories, Applicant indicated that many of his delinquent debts were being paid, but he submitted no documentary evidence to support his claims. He indicated a monthly net income of \$10,800; monthly expenses of \$20, and a \$100 monthly payment on a \$13,000 student loan. He indicated no other debt payments. His net monthly remainder was \$10,680. He also stated that he had \$22,000 in savings.

Applicant provided no explanation for his denial of SOR ¶ 1.c. However, in his Answer to the SOR he stated that all SOR debts, including SOR ¶ 1.c, were being paid. In his response to the FORM, Applicant submitted copies of bank statements showing that he paid six debts, and indicated that he was currently deployed to Afghanistan. Based on the information provided in his response to the FORM, the status of the SOR debts is as follows:

SOR ¶ 1.a (\$74) – this debt was paid in January 2013.

SOR ¶ 1.b (\$1,182) – Applicant stated this debt was sold to the collector alleged in SOR ¶ 1.d. I note that both SOR ¶¶ 1.b and 1.d alleged the same debt amount. However, Applicant did not claim that both SOR allegations alleged the same debt. The evidence available is not sufficient to conclude the debt is duplicated in the SOR. Because he admitted both debts in his Answer to the SOR, and claimed he was making payments on both debts (in his response to DOHA interrogatories). Applicant did not establish that the debts are duplicated. This debt is unpaid.

SOR ¶ 1.c (\$2,240) – Applicant contacted the creditor in January 2013. He claimed the creditor requested time to investigate the claim. He has to call back the creditor to discuss a possible settlement. He promised to settle and pay this debt as soon as possible.

SOR ¶ 1.d (\$1,182) – Applicant settled this debt for \$800 in January 2013.

SOR ¶¶ 1.e (\$9,129) and 1.f (\$2,910) – Applicant stated both student loans were sold to a collection agency. He presented documentary evidence that he made two \$100 payments in December 2012 and January 2013. He also made a \$11,415 payment in January 2013, and paid off these debts.

SOR ¶ 1.g (\$4,042) – Applicant settled this debt for \$1,600 in January 2013.

SOR ¶ 1.h (\$2,825) – Applicant settled this debt for \$2,000 in January 2013.

Based on recent credit reports, most of the alleged debts were reported delinquent between 2010 and 2012. Applicant presented no evidence to establish why the SOR debts became delinquent, whether he was in contact with any of the creditors since he acquired the debts, or whether he made any good-faith efforts to pay, dispute, or otherwise resolve any of these debts before January 2013. He also presented no evidence to show he has received financial counseling or that 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.

The SOR alleged eight delinquent debts, totaling approximately \$23,584, which became delinquent between 2010 and 2012. Applicant presented no evidence to establish why the SOR debts became delinquent, whether he was in contact with any of

the creditors since he acquired the debts, or whether he made any good-faith efforts to pay, dispute, or otherwise resolve any of these debts before January 2013.

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.

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 resolved six of the SOR debts in January 2013. He has two unresolved debts totaling approximately \$3,422. Likely, he just needs additional time to pay one of the debts, and to establish that the second debt is duplicated. It appears that the SOR debts became delinquent at about the same time he started his current job and was deployed to Afghanistan.

I believe Applicant’s payment of six of the SOR debts shows that the current security clearance process has made him fully aware that he is required to maintain financial responsibility to retain his eligibility for a security clearance, and ultimately his job. If he fails to resolve the remaining delinquent financial obligations or to maintain financial responsibility in the future, his eligibility for a security clearance could be revoked.

Considering the evidence as a whole, I find that financial considerations mitigating conditions AG ¶¶ 20(a) and 20(c) apply. Although Applicant presented no evidence that he received financial counseling, there are clear indications that the problem is being resolved and is under control. Applicant had substantial savings and used them to pay most of his delinquent debts. He has the financial means to resolve the two remaining debts. I believe he will resolve the two remaining SOR debts in the near future. On balance, Applicant's two unresolved debts do not cast doubt on his current reliability, trustworthiness, and judgment. The remaining mitigating conditions are not reasonably raised by the facts in 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 a 32-year-old employee of a defense contractor providing interpreter services in Afghanistan. He immigrated to the United States in 1987, and became a naturalized U.S. citizen in 2009. He recently paid six of the SOR debts. He had substantial savings and used his savings to pay all but two of his delinquent debts. There are clear indications that the problem is being resolved and is under control. I believe he will resolve the two remaining SOR debts in the near future.

It appears that he neglected his finances when he took his current job and was deployed to Afghanistan. I believe that the current security clearance process has made him fully aware that he is required to maintain financial responsibility to retain his eligibility for a security clearance, and ultimately his job. On balance, Applicant's two unresolved debts do not cast doubt on his current reliability, trustworthiness, and judgment.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.g:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge