



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



In the matter of:)
)
) ISCR Case No. 11-06451
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems are due, in part, to his 2005 financial criminal misconduct. Additionally, he failed to timely file federal and state income tax returns for a number of years and acquired a substantial debt to the IRS. He also has 11 delinquent consumer debts, and two unpaid student loans. He made some efforts to resolve his IRS debt. However, the record evidence fails to establish Applicant’s financial responsibility in the acquisition and resolution of his delinquent debts. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 24, 2010. On April 5, 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 April 17, 2012, and elected to have his case decided on the written record in lieu of a hearing.

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

A copy of the file of relevant material (FORM), dated June 14, 2012, was provided to him by transmittal letter dated June 18, 2012. Applicant received the FORM on July 2, 2012. 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 July 12, 2012, and provided additional information that was made part of the record. The case was assigned to me on August 8, 2012.

Findings of Fact

Applicant admitted the factual allegations under SOR ¶¶ 1.c through 1.e, and 1.h through 1.q. He denied the allegations under SOR ¶¶ 1.a, 1.b, 1.f, and 1.g. 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 two DOHA interrogatories, I make the following additional findings of fact.

Applicant is a 53-year-old employee of a defense contractor. He married his spouse in February 1982, and they have three grown daughters. He was awarded a bachelor's degree in business administration in January 2002. Applicant served on active duty as an enlisted in the U.S. Army from October 1979 until October 1981, and in the Air National Guard from January 1985 until July 2001. His time in service was characterized as honorable. Applicant was granted access to classified information at the secret level by the Defense Department in January 1985, which he apparently held until his discharge. (Item 5, SCA)

In the early 2000s, Applicant was employed as an accountant in a city's finance department. In 2002, he misused the city's credit card and filed fraudulent travel vouchers. He improperly charged as much as \$2,500 a month on his employer's card to pay for cigarettes, food, and alcohol. He resigned his position shortly after an audit disclosed his criminal behavior. In January 2005, he was charged with fraudulent scheme (felony 2) and theft (felony 3). He pled guilty to a reduced charge of theft (felony 5), and was sentenced to three years supervised probation and he was required to make restitution of \$18,000. He completed his probation in February 2008, and the guilty judgment was set aside in May 2009.

Applicant was unemployed from November 2002 until May 2003, and from May 2009 until July 2009. From June 2003 until April 2009, he worked as a network administrator for a not-for-profit organization, and part-time as a pizza delivery man. He has been consistently and fully employed as an expeditionary instrumentation systems technician for a government contractor from July 2009 to present. As of April 2012, his hourly base rate pay was \$15.54.

Applicant disclosed in his May 2010 SCA (Section 22 - Police Record) that he was convicted of theft (felony 5) in July 2005. He explained that his then alcohol consumption impaired his judgment and contributed to him misusing his employer's credit card. (Section 24 – Use of Alcohol). He also disclosed that he had financial problems, which included his failure to timely file federal and state income tax returns and his failure to pay Federal and state income taxes. He also had judgments filed against him, numerous delinquent debts in collection or charged off, and had his wages garnished by creditors. (Section 26 – Financial Record) His background investigation addressed his financial problems and revealed the debts alleged in the SOR, which are established by the evidence.

In September 2010, Applicant was interviewed by a Government investigator about his 2005 theft conviction, delinquent debts, and his overall financial situation. Applicant explained that his financial problems began while he was unemployed from November 2002 until June 2003. He resigned his position because of an audit and a criminal investigation against him for theft and fraudulent scheme. He was employed from June 2003 until April 2009, but he took a reduction in pay. And, he was unemployed from May 2009 until July 2009, when he accompanied his spouse overseas.

During the September 2010 interview, Applicant admitted owing the IRS approximately \$27,000 for income tax due for years 2002 through 2010. He claimed he had filed federal and state personal income tax returns for those years. He explained that the IRS was garnishing his income tax returns and applying it to his debt, and that he was making additional periodic payments.

Applicant's IRS documents (submitted with his answer to the FORM) show that he filed his 2002 income tax return in September 2005. As of September 2011, he owed \$2,380 in past due income taxes. He filed his 2003 income tax return in October 2004. He did not file income tax returns for tax years 2004 and 2005, and the IRS filed substitute income tax returns for him for both tax years. As of September 2011, he owed \$4,584 for tax year 2004 and \$6,509 for tax year 2005.

Applicant filed his 2006, 2007, and 2008 income tax returns in August 2011. As of September 2011, he owed \$5,574 for tax year 2006; \$2,787 for tax year 2007; and \$4,503 for tax year 2008. The IRS imposed late filing penalties, failure to pay tax penalties, and assessed interest against Applicant for tax years 2002 through 2008. Applicant timely filed his 2009 and 2010 income tax returns.

The IRS levied and was collecting from the proceeds of a rental property Applicant owns in the United States. Applicant's rental owner statement shows the IRS collected \$7,695. The IRS also levied and was collecting from his pay check. In May 2011, Applicant issued a \$6,000 check to the IRS. Additionally, in April 2012, Applicant entered into an agreement with the IRS to pay \$500 a month until the debt is satisfied. In his response to the August 2011 DOHA interrogatories, Applicant stated that he did

not file state income tax returns during the seven years preceding his May 2010 SCA. The extent of his debt to the state, if any, is not known.

In his Answer to the SOR, Applicant denied ¶ 1.a, and claimed that he was no longer indebted to the IRS in the amount of \$27,000. He asserted that he had paid over \$30,000 in past-due income tax payments, including interest and penalties imposed. He did not present clear evidence as to how much he currently owes the IRS.

Applicant denied SOR ¶ 1.b, because as of his answer to the SOR, he had filed all of his past-due income tax returns. Concerning SOR ¶ 1.c, Applicant admitted he did not file state taxes for tax years 2004 through 2008. He claimed that he had filed state taxes for tax years 2009 through 2011. Applicant denied SOR ¶¶ 1.f and 1.g, and claimed that the alleged delinquent student loans were currently in forbearance. He failed to submit documentary evidence to support both claims. There is no documentary evidence showing when the student loans were placed on forbearance and when the forbearance will lapse.

Applicant admitted all remaining SOR allegations. He stated that he was unable to pay those delinquent debts because of his periods of unemployment, underemployment, and his obligation to pay first the court-ordered restitution, and the levies imposed by the IRS. Applicant claimed he had paid some of his delinquent debts, including two for issuing check without sufficient funds. However, Applicant presented no documentary evidence of payments made, contacts with creditors, or of any other actions taken to resolve his delinquent debts. Applicant 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.

In 2005, Applicant was convicted of theft (felony 5) for abusing his employer's credit card and filing false travel vouchers. He failed to timely file his federal and state income tax returns for tax years 2002 through 2008, and acquired a significant debt to the IRS. In 2011, he started to make payments to the IRS to satisfy tax liens and collection levies. Although he has made substantial payments to the IRS, the extent of his current debt to the IRS and to his state are not clear.

Additionally, he has 15 debts that have been delinquent for a number of years, including two student loans. The aggregate total of the consumer debts alleged in the SOR is over \$49,000, including his two student loans. This does not include his debt to the IRS and his state for past-due income taxes. AG ¶ 19(a): "inability or unwillingness to satisfy debts;" AG ¶ 19(c): "a history of not meeting financial obligations;" AG ¶ 19(d): "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;" and AG ¶ 19(g): "failure to file annual

Federal, state, or local income tax returns as required or the fraudulent filing of the same” 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’s favorable evidence fails to fully establish the applicability of any mitigating condition. His financial problems are ongoing, he has an extensive delinquent debt, and the evidence fails to show that he acquired the debt under such circumstances that they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant’s periods of unemployment and underemployment were due, in part, to his financial criminal misconduct. Applicant’s favorable evidence is not sufficient to show that he acted responsibly in the acquisition of his debts, or that he has been responsible in addressing his financial obligations. AG ¶ 20(b) does not apply.

The available evidence fails to explain Applicant’s failure to address his delinquent consumer debt in a timely and responsible manner. I considered that Applicant made some efforts to resolve his debts by establishing a payment plan with the IRS. However, questions remain about his current financial situation and his ability and willingness to continue making his ongoing payments. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility.

AG ¶ 20(c) does not apply. Applicant presented no evidence to show he received financial counseling or that he follows a budget. 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. The remaining mitigating conditions (AG ¶¶ 20(e) and (f)) 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 has been making some efforts to resolve his financial problems. However, the record evidence fails to establish Applicant's financial responsibility in the acquisition and resolution of his delinquent debts. 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.q:	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