



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



In the matter of:)
)
) ISCR Case No. 11-07346
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant accumulated significant delinquent debt over the last 10 years. 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. It is too soon to determine whether Applicant has a viable plan to resolve his delinquent debt, or that 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. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 1, 2011. On May 3, 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 26, 2012, and requested a hearing before an administrative judge.

The case was assigned to me on June 22, 2012. DOHA issued a notice of hearing on July 16, 2012, scheduling a hearing for August 7, 2012. At the hearing, the Government offered exhibits (GE) 1 through 5. Applicant testified, and submitted exhibits (AE) 1 through 10. AE 10 was received post-hearing. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on August 15, 2012.

Procedural Issue

Department Counsel moved to strike the following duplicate SOR allegations: SOR ¶¶ 1.qq, 1.tt, 1.ggg, and 1.rrr. Applicant did not object and I granted the motion.

Findings of Fact

Applicant admitted all 71 SOR factual allegations, some with comments. 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 47-year-old employee of a defense contractor. He married his spouse in October 1990, and they have a daughter, age 20, and a son, age 17. He was awarded a bachelor's degree in computer science in 1987. He is currently working on his master's degree and anticipates receiving his master's degree in December 2012. This is Applicant's first application for a security clearance.

In 1996, Applicant established his own information technology (IT) and financial service company. Initially, his company did well and Applicant was able to make a living. Around 1998, his contracts began to dwindle and Applicant started to develop financial problems. In 2000, Applicant shut down his company and took a job paying \$120,000 a year. However, the company provided no medical insurance for him or his family. At the time, his wife was working for a large airline that provided medical insurance coverage for the family.

In 2002, Applicant's company relocated to another state, and he had to relocate to keep his job. Additionally, he took a \$25,000 pay cut. In 2003, his wife was forced to take a three-year leave of absence, because of her employer's poor business situation. Afterward, his wife was unable to work because of health problems related to an on-the-job accident. Applicant's family lost its medical insurance coverage when his wife was

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.

placed on leave. Applicant was not able to pay his family's medical bills because they did not have medical insurance coverage, his wife was not working, and he took a \$25,000 pay cut. Additionally, in 2004, Applicant's mother moved in to live with him because of her poor health. His income only allowed him to pay for his family's day-to-day living expenses.

In 2006, Applicant's employer's business dwindled and Applicant's work hours were reduced. He started to pick up small contracts to supplement his income. In June 2008, Applicant's full-time job ended, and he was unemployed for one month. From July 2008 until April 2009, Applicant worked full time as an IT services contractor. His salary was around \$60,000. When his contract ended, he was unemployed for four months. From July 2009 until July 2010, he was employed with a company providing IT services. His salary was around \$80,000. When his contract ended, he again was unemployed for three months. He has been fully employed from September 2010 until the present. He started working as a project manager for his current employer, a government contractor, in January 2011. His current salary is \$87,000.

Applicant now has a steady job that provides him with a solid income, and medical insurance benefits. He described his current financial situation as in a rebuilding stage. He is trying to resolve his delinquent debts and rebuild his credit rating. Applicant considered filing for bankruptcy protection, but discarded the idea because he wants to be responsible to his creditors. One month before his hearing, Applicant's wife started a part-time job seeking additional income to pay the family's delinquent debts. She currently works 20 hours a week, but Applicant believes she will be able to work more hours after her probation period ends.

In his February 2011 SCA, Applicant disclosed that he had financial problems, which included property repossessions, judgments filed against him, debts turned over to collection companies, and accounts and credit cards charged off or cancelled for failure to pay as agreed. The subsequent background investigation disclosed the 71 delinquent debts alleged in the SOR, totaling approximately \$82,000, which include numerous delinquent medical bills, large consumer debt, and two car repossessions. Applicant's delinquent debts accumulated from early to mid-2000 to present.

As of his hearing date, the status of his delinquent debts is as follow:

SOR ¶¶ 1.a, 1.x, 1.cc, 1.dd, 1.oo, 1.pp, 1.ss (insufficient funds checks), 1.ddd, 1.ppp, and 1.qqq - these debts are unpaid and unresolved. Applicant promised to pay them sometime in the near future. As of the hearing date, he presented no documentary evidence of contacts with creditors or payments made.

In August 2012, Applicant requested information from the credit bureaus about the following debts: SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.h, 1.i, 1.j, 1.k, 1.m, 1.aaa, and 1.bbb. He claimed he was unable to identify the proper creditors.

In August 2012, Applicant contacted the creditors for SOR ¶¶ 1.e and 1.z. He received settlement offers for less than what he owes, but he did not have the money to pay the debts.

According to Applicant, the creditor for SOR ¶ 1.g refused to discuss a prospective settlement or payment plan.

Applicant consolidated 11 medical bills under one collector: SOR ¶¶ 1.l, 1.n, 1.o, 1.p, 1.q, 1.r, 1.t, 1.u, 1.kk, 1.mm, and 1.sss. He agreed to start making payments in the near future.

Applicant's documentary evidence shows that he paid SOR ¶¶ 1.s, 1.ee, and 1.sss.

Applicant settled and made payment agreements on SOR ¶¶ 1.v, 1.uu, 1.hhh, 1.y, 1.aa (two payments made), 1.bb, 1.ff (one payment made), 1.gg, 1.ii, 1.ll, 1.nn (one payment made), 1.vv (making payments), 1.xx, 1.eee, 1.fff, 1.jjj, 1.kkk, and 1.nnn. He documented only the payments indicated above. His payments on the remaining debts were scheduled to start sometime after the hearing.

Applicant claimed he settled and paid SOR ¶ 1.ccc. He presented no documentary evidence to support his claim.

SOR ¶¶ 1.qq, 1.ss, 1.ggg, 1.lll, and 1.rrr are duplicate allegations, which were stricken pursuant to Department Counsel's motion.

Applicant disputed the following debts and they were removed from his credit report: SOR ¶¶ 1.w, 1.jj, 1.yy, 1.zz, 1.mmm, and 1.ooo.

In sum, of the 71 alleged delinquent debts, five were deleted as duplicates, six were disputed and deleted from his credit report, and four were paid. Applicant claimed he had settled and established payment plans for 31 SOR debts. Most of his efforts to contact creditors started in March-April 2012, and continued in September-August 2012. Applicant presented little documentary evidence of contacts with creditors or payments made before March-April 2012. He made payments (one or two) on only five of the settled SOR debts. Most of his payment agreements were schedule to start after his hearing. Considering the evidence as a whole, Applicant resolved 30 of the alleged SOR debts. He has 41 SOR debts that are unresolved.

Applicant repeatedly expressed remorse for his financial problems. He averred that he has learned his lesson from his past financial mistakes. He explained that he was making payments on other small debts that were not alleged in the SOR because they were paid. He presented evidence that his car and a home equity loan were paid. He also stated that he resolved some small credit card debts by transferring those credit card balances onto another credit card. (Tr. 79) Applicant presented no evidence to show he paid or is paying on the credit card where the balances were transferred.

Applicant explained that he did not have the financial means to pay his delinquent debts more aggressively because he was his family's sole provider. Additionally, he was maintaining two households because his family was in one state and he was working in another state. He also supported his mother and paid for her elderly care. Applicant and his wife follow a budget; however, he has not participated in any financial counseling. He believes that he has a great job that provides him with sufficient income to address his delinquent debts. He also believes that he has a good plan to pay off all of his delinquent debts.

As part of his foreign travel disclosure, Applicant stated that between 2002 and 2005, he took his family on two vacation trips to Canada. In 2005, 2007, and 2008, Applicant and his family went on six-day vacations in Mexico. In 2006, Applicant and his family travelled to the Netherlands for a nine-day vacation.

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.

Between 2000 and 2012, Applicant accumulated significant delinquent debt, most of which remain delinquent. 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 failed business; his periods of unemployment and underemployment; his wife's unemployment, her medical condition and inability to work; and his family's lack of medical insurance 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 addressing his financial obligations. Applicant provided limited documentary evidence to show contacts with creditors, payments made, or efforts to otherwise resolve his debts prior to March-April 2012.

Applicant claimed his financial problems started around 2000 when his business failed. His problems were aggravated when his wife was forced to take leave without pay. Later she was unable to work. Then between 2006 and 2008, his work hours were reduced and in 2008, he lost his job. Applicant has outstanding debts dating back to 2004-2006. Notwithstanding his financial problems, Applicant took week-long family vacations to foreign countries in 2005, 2006, 2007, and 2008 and failed to address his delinquent obligations. 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 March 2012. I considered Applicant's recent efforts 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. 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) does not apply. Applicant presented no evidence to show he received financial counseling. 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 recently disputed some delinquent obligations and they were removed from his credit report. However, it does not mitigate the financial considerations concern. 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 accumulated significant delinquent debt over the last 10 years. 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 record evidence fails to establish that Applicant showed financial responsibility in the acquisition and resolution of his delinquent debts. It is too soon to determine whether Applicant has a viable plan to resolve his delinquent debt, or that 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.r, 1.t-1.v:
1.x-1.z, 1.bb-1.dd, 1.kk, 1.mm, 1.oo, 1.pp,
1.rr, 1.ss, 1.aaa-1.fff, 1.hhh, 1.iii,
1.mmm, 1.ooo-1.qqq: Against Applicant

Subparagraphs 1.s, 1.w, 1.aa,
1.ee, 1.ff-1.jj, 1.ll, 1.nn, 1.qq,
1.tt, 1.uu-1.zz, 1.ggg, 1.jjj-1.iii,
1.nnn, 1.rrr, and 1.sss: 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