



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



In the matter of:)
)
) ISCR Case No. 11-10823
)
Applicant for Security Clearance)

Appearances

For Government: Christopher N. Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/26/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of financial problems dating back to 2007. The evidence fails to establish Applicant’s financial responsibility in the resolution of his delinquent debts. He does not have a viable plan to resolve his delinquent debt, and he is not in control of his financial situation. At this time, the record evidence fails to convince me of Applicant’s eligibility for a security clearance. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 15, 2010. On October 3, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations).¹ Applicant answered the SOR on November 9, 2012, and requested a decision based on

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.

the record. On December 3, 2012, the Government requested a hearing before an administrative judge. (Appellate Exhibit 1)

The case was assigned to me on January 7, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 15, 2013, scheduling a hearing for February 6, 2013. At the hearing, the Government offered exhibits (GE) 1 through 5. Applicant testified and offered exhibits (AE) 1 through 9. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on February 14, 2013.

Findings of Fact

In his Answer, Applicant admitted all the factual allegations in the SOR, except for ¶¶ 1.f and 1.i, which he denied. At his hearing, Applicant admitted SOR ¶ 1.f, and reiterated his denial of SOR ¶ 1.i. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 53-year-old physical security officer employed by a government contractor. He is a high school graduate. Applicant joined the police force in his state in 1985. The following year, he was shot while on duty, and after seven different operations, he was medically retired in 1989. He receives approximately \$1,800 per month in retired pay. (Tr. 87)

Applicant married his first wife in September 1994, and they were divorced in September 2008. He has a 16-year-old daughter of this marriage for whom he provides \$620 monthly in support. He married his current wife in April 2009. They have two children, ages two and one.

From October 1990 until February 2009, Applicant worked full-time as a security officer for numerous government contractors. In 2009, he resigned from his job looking for a better job opportunity; however, he failed some qualifications tests required for his new job and he was laid off. He was unemployed from February 2009 until September 2009. He was employed from September 2009 until February 2010, but resigned his position because it was not a full-time job and he did not have enough working hours. (Tr. 47-48, 93) He was unemployed from February 2010 until June 2010. He has been working for his current employer, a government contractor, since June 2010. Applicant's 2011 net earnings were approximately \$53,000, including his \$1,800 per month retired pay he receives from the police force. In 2012, he earned approximately \$56,500. After paying his monthly expenses, he is left over with close to \$200 a month. (Tr. 78-79)

Applicant was granted access to classified information at the top secret level in 1998. (GE 1) There is no evidence to show that he has compromised or caused others to compromise classified information. Outside of the security concerns alleged in the current SOR, there is no evidence that Applicant had any other security issues of concern.

In his June 2010 SCA, Applicant disclosed he had financial problems. He revealed that he had a vehicle repossessed in April 2010, and debts turned over to collection agencies. He did not disclose the full extent of his delinquent debts. In July 2010, Applicant was interviewed by a Government investigator and disclosed delinquent accounts, including his mortgage that was delinquent since January 2009. He also discussed numerous consumer accounts, credit cards, and loans that were delinquent since late 2007 or early 2008. During the interview, Applicant told the investigator that in the past, he had retained the services of a company to help him consolidate and pay his debts, and recently retained the services of a law firm (LF 1) to help him consolidate and pay his delinquent debts.

The subsequent background investigation revealed the 10 delinquent debts alleged in the SOR, totaling approximately \$631,000. Applicant admitted all SOR allegations, but denied SOR ¶ 1.i (alleging a \$560,000 delinquent mortgage) because it is not his mortgage. After his interview, Applicant contacted the mortgage creditor to dispute the debt, and retained the services of a law firm (LF 2) to help him dispute the debt. The status of the alleged SOR debts is as follow:

SOR ¶ 1.a – Applicant acquired this medical debt in 2011. Although Applicant was fully employed, he had no medical insurance because he claimed he could not afford it. After receiving the medical services, he claimed he did not have the money to pay the debt. Applicant referred the debt to LF 1. He presented no evidence of contacts with the creditor or of any payments made. (Tr. 50, 82-83, AE 6)

SOR ¶¶ 1.b through 1.e, and 1.j – Applicant admitted these are his delinquent debts. He referred these debts to LF 1 for consolidation, settlement, and payment. LF 1 documents identified these debts as being “in progress,” which means that Applicant does not have sufficient funds in escrow for LF 1 to contact the creditors and attempt a settlement. The accounts are in a holding pattern. Applicant presented no evidence of contacts with the creditors alleged in the SOR, or of any payments made (except for those mentioned in the decision). (AE 7, Tr. 56-58)

SOR ¶ 1.c concerns a delinquent credit card. SOR ¶ 1.d is a loan Applicant took in 2007 to pay delinquent debts. He defaulted on the loan in 2008. SOR ¶ 1.e is a delinquent car loan for a new car Applicant purchased in 2007. He voluntarily returned it to the dealer in April 2010 when he could not make the payments. After receipt of the SOR, Applicant turned over the \$12,553 delinquent debt to LF 1 to be consolidated with his other delinquent debts. In February 2013, Applicant received a settlement offer for him to pay \$2,510 and the debt will be considered settled in full. There is no evidence as to whether Applicant was able to take the settlement offer.

SOR ¶ 1.f – Applicant purchased a used car in 2010, and he defaulted shortly thereafter because he resigned from his job. He is waiting for the creditor to provide him with the final bill. Applicant intends to refer this account to LF 1 for consolidation with his other debts.

SOR ¶ 1.g – Applicant acknowledged this is his delinquent medical debt. In May 2012, he made a \$60 payment to show he was making an effort to pay the debt. He presented no evidence of contacts with the creditor before May 2012, or after that date. Applicant referred the debt to LF 1 for consolidation with his other delinquent debts.

SOR ¶ 1.h – Applicant purchased a home in April 2007. He became delinquent in his mortgage payments in 2009, because he was unemployed. In 2011, he hired a mortgage negotiator to help him modify the terms of the mortgage. In 2012, he started his own mortgage negotiations with the bank. On February 15, 2013, the bank denied Applicant's request for a mortgage modification. Applicant plans to sell the property on a short sale. If that does not work, he plans to transfer the property to the lender through a deed-in-lieu of foreclosure. He believes that either way he will be release of financial responsibility for the property. Applicant is 28 payments past due. (AE 10)

Applicant explained that his financial problems were the result of periods of unemployment and underemployment. After his divorce, he was left with a child support obligation (\$620 a month). While unemployed, he did not have sufficient income to pay for his family's day-to-day living expenses, child support obligations, and his delinquent debts. Applicant believes he has been diligently working on paying his debts and repairing his credit. He hired LF 1 to help him consolidate, settle, and pay some of his debts, and he hired LF 2 to help him improve his credit score and dispute other debts. Applicant's credit reports show that he paid eight delinquent accounts (not alleged in the SOR) since he retained LF 1's services.

Applicant testified that he takes his job and his obligations to the Government seriously. He admits responsibility for his financial mistakes. He acknowledged that he has had financial problems, but believes that his financial problems were caused by circumstances beyond his control. Applicant is aware that he needs to improve his financial situation. He would like to resolve his debts, but it will take time to do so. He promised that as long as he is employed he will continue his efforts to resolve his debts. Although he has two young children, his wife is considering taking a job to help expedite the payment of the debts.

Applicant considers himself to be honest, trustworthy, and a dedicated employee. He is punctual and knowledgeable. He also considers himself to be a loyal American and a good worker. He noted his service as a police officer. He would like to continue working for government contractors and to resolve his delinquent financial obligations. He needs his security clearance to retain his job, and more importantly to find a better-paying job that will give him the ability to pay all of his delinquent debts and support his family.

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 2007. His financial problems continue to present as evidenced by the nine delinquent debts alleged in the

SOR, totaling about \$71,000. (Applicant is disputing SOR ¶ 1.i.) 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 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 resolution of the debts or that he acquired the debt under circumstances that are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's divorce and his periods of unemployment and underemployment (to some extent) may be considered as circumstances beyond his control that contributed to, or aggravated, his financial problems. Applicant resigned his full-time job in February 2009, seeking a better job, but failed to qualify for the new position and was laid off. Then, in February 2010, he resigned his job because he was not working sufficient hours, but he did not have a job lined up. Under these circumstances, I do not find Applicant's two periods of unemployment following his resignations occurred due to circumstances beyond his control.

Even assuming that his periods of unemployment were caused by circumstances beyond his control, I find Applicant's evidence failed to show that he acted responsibly in his efforts to resolve his SOR debts. I gave Applicant credit for retaining the services of LF 1 and LF 2 to help him resolve his financial problems. I also gave him credit for paying eight delinquent debts not alleged in the SOR. Notwithstanding, considering the evidence as a whole, he presented little documentary evidence of payments made, contacts with creditors, or of any efforts to resolve his delinquent debts before he was questioned about them during his July 2010 interview with a government investigator. AG ¶ 20(b) applies, in part, but does not mitigate the financial considerations concerns.

AG ¶ 20(c) applies in part. Applicant did not participate in financial counseling. However, Applicant receives credit because he retained the services of LF 1 and LF 2 to help him resolve his delinquent debts. Notwithstanding, AG ¶ 20(c) does not fully mitigate the financial considerations concerns. Considering the number of debts, the small value of some of the debts, the aggregate total of the debts, and his lack of efforts to resolve even his smaller debts, I cannot find that there are clear indications that his financial problems are being resolved or under control.

Questions remain about Applicant's current financial situation and his ability and willingness to resolve his delinquent debts. Considering that Applicant has been employed since June 2010, and that he receives retirement payments, he failed to provide a reasonable explanation for his failure to address even his smallest debts. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility, or that he has a viable plan to resolve his financial problems. AG ¶¶ 20(d) does not apply.

AG ¶ 20(e) applies because Applicant submitted documentary evidence of efforts to dispute the legitimacy of SOR ¶ 1.i. 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 honorably served over four years in a state police force until he was medically retired because of duty-related injuries. Apparently, he is a technically proficient, punctual, and dedicated employee. He has significant experience working as a security officer for government contractors while possessing a security clearance. Except for the current security concerns, there is no evidence of any problems or concerns while he possessed a security clearance.

Applicant's credit reports showed he paid eight delinquent accounts not alleged in the SOR. He retained the services of two law firms to help him consolidate, negotiate,

pay some debts, dispute some debts, and reestablish his credit. Notwithstanding, the record evidence fails to establish that Applicant showed financial responsibility in the resolution of his delinquent debts. Because of his extensive experience working for federal contractors and years holding a security clearance, Applicant knew or should have known about the importance of maintaining financial responsibility. He failed to pay small medical debts he incurred after he started working full-time in 2010. Considering the record as a whole, Applicant does not have a viable plan to resolve his delinquent debt, he is not in control of his financial situation, and his finances remain a security concern.

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.h, 1.j:	Against Applicant
Subparagraph 1.i:	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