



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



In the matter of:)
)
) ISCR Case No. 11-10965
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is a 43-year-old employee of a defense contractor. He has five outstanding debts that became delinquent between 2005 and 2012, totaling around \$54,480. Applicant failed to submit sufficient evidence to show financial responsibility concerning the debts alleged in the SOR. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 19, 2010. On April 24, 2013, 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 July 3, 2013, and elected to have his case decided on the written record in lieu of a hearing.

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.

A copy of the file of relevant material (FORM), dated August 19, 2013, was provided to him by transmittal letter dated August 23, 2013. Applicant received the FORM on September 3, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant's response was a one-page letter, signed by his attorney, dated September 27, 2013, stating that Applicant refiled his Chapter 7 bankruptcy protection case, and was in the process of obtaining a loan modification. The attorney anticipated the discharge of Applicant's dischargeable debts in October 2013. The case was assigned to me on November 13, 2013.

Findings of Fact

Applicant admitted all the factual allegations in the SOR, with explanations. His admissions are hereby incorporated as findings of fact. After a thorough review of the evidence of record, including his SCA, his answers to the SOR and DOHA interrogatories, his response to the FORM, and the credit bureau reports, I make the following findings of fact:

Applicant is a 43-year-old fire safety technician employed by a defense contractor. He graduated from high school in June 1989. He married his wife in August 2005, and they have a seven-year-old daughter.

Applicant's work history indicates he worked part-time as a volunteer fireman from December 2001 to December 2009, as an emergency medical technician from September 2007 to October 2009, part-time as an apprentice carpenter from May 2003 to September 2007, and as a health technician from October 2009 to October 2010. He started working full-time for his current employer in November 2010.

Applicant disclosed in his November 19, 2010 SCA (Section 26 – Financial Record) that he had financial problems, which included delinquent credit cards in collection, debts over 180 days delinquent, and a delinquent mortgage. The background investigation addressed his financial problems and revealed the five delinquent debts alleged in the SOR, totaling over \$59,000. Additionally, he filed for Chapter 7 bankruptcy protection in November 2012. His case was dismissed in January 2013, because he failed to submit required documents. The SOR debts are established by the credit reports submitted by the Government and by Applicant's prior statements acknowledging the debts.

Applicant explained that he and his wife purchased a home in 2004. At the time, both were fully employed and had the financial ability to pay the mortgage and their other expenses. Applicant and his wife traveled to the Caribbean twice on vacation in May 2005 and October 2005, the second trip for their honeymoon. Applicant stated his wife became ill in 2005, and they have not had a stable income since then. Because of her medical condition, she had to decrease her working hours, and he also had his own employment difficulties.

To supplement his income, between 2005 and 2007, Applicant took a part-time job as an apprentice carpenter. He was laid off for three months in 2005, and was unable to find consistent part-time work. He explained that sometimes he and his wife were both out of work at the same time. Additionally, his daughter was born in 2006, and that increased the family's financial needs. As of July 2013, his wife had undergone seven surgeries to decrease her pain and improve her physical function. (SOR Answer).

Concerning the allegation in SOR ¶ 1.b, Applicant claimed he attempted to work with his creditor, and refinanced his mortgage under an adjustable rate mortgage (ARM). When the interest rate increased, their income had decreased, and they were unable to make the payments and the mortgage became delinquent. He claimed that in 2010, he started working with a financial advisor that gave him bad advice. He was told to stop making payment on his debts, and the financial advisor would then work out a payment plan with the creditors. He claimed he currently has a new financial advisor.

Applicant stated he sought financial assistance from state agencies, but they were denied assistance because they were making too much money. In the meantime, his wife continued to incur higher medical bills. Applicant's wife was approved for social security disability and began receiving payments in September 2012. Applicant claimed to have a working budget, and with the help of a financial advisor he is working to correct his financial situation.

Applicant and his wife filed for Chapter 7 bankruptcy protection in November 2012. However, the case was dismissed for failure to file required documents. (SOR ¶ 1.a) He averred he contacted several state and federal agencies seeking assistance to save the house from foreclosure. Applicant's attorney submitted Applicant's response to the FORM. In his September 2013 letter, the attorney stated that he had refiled Applicant's petition for Chapter 7 bankruptcy protection, and that the creditor's meeting was scheduled for October 2013. He anticipated Applicant would be discharged of all his dischargeable obligations sometime after that meeting. He also indicated Applicant was in the process of obtaining a loan modification.

Concerning SOR ¶ 1.c, Applicant explained that in 2008, he took a personal loan to pay delinquent debts accumulated between 2006 and 2007. The loan became delinquent in 2008. Concerning SOR ¶ 1.f, Applicant explained that he was not able to pay the debt because of his diminished earnings and overall financial situation. The debt is still outstanding. Applicant claimed he included these two debts on his bankruptcy filing. In his answer to the SOR, Applicant stated that he paid SOR ¶¶ 1.d and 1.e. He failed to submit documentary evidence to support his claims.

Applicant failed to present documentary evidence to show that he maintained contact with his creditors, or made any payments towards his debts. Except for his attorney's representations, he also failed to present documentary evidence showing that he refiled his Chapter 7 bankruptcy petition, or that he is in the process of obtaining a loan modification.

Applicant's August 10, 2010 pay stub shows he was earning approximately \$4,000 a month. He failed to present any additional information concerning his current financial situation, including a working budget showing his monthly gross income, living expenses, outstanding debts, payments being made, and net remainder.

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 evidence established the five delinquent debts alleged in the SOR, totaling around \$54,480, which became delinquent between 2005 and 2012. 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 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 has been fully employed with a government contractor since November 2010, and earned around \$4,000 a month. Except for the Chapter 7 bankruptcy filing, he presented little evidence of any debt payments, contacts with creditors, or that he otherwise attempted to resolve his debts. He participated in financial counseling through the bankruptcy process.

Applicant claimed that he paid SOR ¶¶ 1.d and 1.e, but failed to submit documentary evidence to support his claims. He also claimed he is pursuing a mortgage modification, refiled his Chapter 7 bankruptcy case in 2013, and anticipates he will be discharged of all dischargeable debts sometime in 2013.

Considering the evidence as a whole, I find that none of the financial considerations mitigating conditions apply. Applicant's financial problems are ongoing, and he owes a large debt. I considered that the debts became delinquent, in part, because of his wife's medical problems, his and his wife's employment problems, their diminished earnings, and the 2006 birth of his daughter. His wife's medical problems and their employment problems could be considered as circumstances beyond his control that contributed to his financial problems.

Notwithstanding, Applicant's scant favorable evidence is insufficient to show financial responsibility with respect to any of the debts alleged in the SOR. The outcome of Applicant's alleged mortgage modification, his Chapter 7 bankruptcy refiling, and the anticipated discharge of all of his dischargeable debts is speculative at best. His failure to submit documentary evidence of any debt payments, his contacts with creditors, his efforts to modify the mortgage, and the 2013 refiling of his bankruptcy, raise doubts on Applicant's assertions and mitigating evidence. In light of all available evidence, Applicant's unresolved debts cast doubt on his current reliability, trustworthiness, and judgment.

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 43-year-old employee of a defense contractor. He has five outstanding debts that became delinquent between 2005 and 2012. He failed to submit sufficient documentary evidence to establish financial responsibility in the handling of his financial obligations.

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.f:	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