



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



In the matter of:)	
)	
)	ISCR Case No. 11-12907
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

10/16/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is a 50-year-old employee of a defense contractor. He has 11 outstanding debts that became delinquent between 2006 and 2012, totaling \$80,000. He failed to establish financial responsibility in the handling of his debts. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 18, 2011. On February 11, 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 March 14, 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 July 30, 2013, was provided to him by transmittal letter date July 30, 2013. Applicant received the FORM on August 9, 2013. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. His response was due on September 9, 2013. As of September 20, 2013, he had not responded to the FORM. The case was assigned to me on September 24, 2013.

Findings of Fact

Applicant denied the factual allegations in SOR ¶¶ 1.a through 1.d, and 1.i through 1.k, totaling \$2,559. He admitted the allegations in SOR ¶¶ 1.e through 1.h, totaling \$77,441. After a thorough review of the evidence of record, including his SCA, his answers to the SOR, his answers to interrogatories, and two credit bureau reports, I make the following findings of fact:

Applicant is a 50-year-old electronics assembler employed by a defense contractor. He attended college and completed an associate's degree in 1993. He married his first wife in 1984 and was divorced in 1993. He married his current wife in 1997, and they have been separated since June 2005. Applicant has four children, ages 27, 26, 20, and 10.

Applicant's work history indicates he worked at a family business from March 2004 until January 2009, when the family business was sold. He started working for his current employer, a government contractor, in January 2009.

Applicant disclosed in his May 18, 2011 SCA (Section 26 – Financial Record) that he had financial problems, which included delinquent debts in collection, cancelled credit cards, delinquent child support obligations, and wage garnishments. The background investigation addressed his financial problems and revealed the 11 delinquent debts alleged in the SOR, totaling over \$80,000. The SOR debts are established by the credit reports submitted by the Government and by Applicant's prior statements acknowledging some of the debts.

In August 2011, Applicant was interviewed by a government background investigator and questioned about the delinquent debts alleged in the SOR. Applicant denied some of the debts and he disputed the amount owed on other debts. He failed to present documentary evidence showing that he disputed the debts with the creditors or through the credit bureaus. He also failed to establish that he has a legitimate reason to dispute the debts. Applicant explained that his financial problems were the result of a decrease in his income and his separation from his wife. In 2004, he left his job and went to assist his mother in the family business. During the first year he work at the family business he did not received any pay, and during the following years he earned between \$12,000 and \$18,000 a year. He was financially unable to pay his debts and they became delinquent.

Applicant separated from his wife in 2005. During the separation process, a family court judge used his past income to calculate his child support obligations and he was financially unable to pay it. He acquired a substantial child support debt that remains in arrears. In 2006, he was convicted of contempt of court for failure to pay his child support and served 180 days in jail. The court ordered the garnishment of 50% of Applicant's wages to pay his delinquent child support obligation.

Applicant told the investigator that prior to changing jobs and his separation from his wife, he did not have any financial problems. He has not addressed any of his delinquent debts because he is waiting for the resolution of his divorce. He wants the court to determine which of the marital debts belong to him. He promised to make payment arrangements and to start paying his debts as soon as that determination is made.

Applicant believes that his current financial situation is stable. He claimed that his present earnings allow him to meet his current financial obligations. Applicant's personal financial statement, dated December 2012, indicates that he is earning approximately \$3,288 a month. His monthly net income is \$991, with a net remainder of \$0, after paying his monthly expenses. He listed no debt payments.

Applicant failed to present documentary evidence to show that he maintained contact with his creditors, established payment plans, or disputed any of the SOR debts. He presented no evidence to show he has received financial counseling. Applicant receives credit for seeking a higher-paying job with a government contractor. However, he failed to present any evidence to show that he used his higher earnings to pay any of his outstanding delinquent debts.

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 11 delinquent debts alleged in the SOR, totaling \$80,000, that became delinquent between 2006 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 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 has been fully employed with a government contractor since January 2009, and earns around \$3,288 a month. Outside of his garnishment of wages to pay for his delinquent child support obligations, he presented no documentary evidence of any debt payments, contacts with creditors, disputes, or that he otherwise attempted to resolve his debts. He has not participated in financial counseling. He is waiting for the divorce court to award responsibility for the marital debts to start addressing only those debts assigned to him.

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 change of employment, diminished earnings, and his separation from his wife. Of these, only the separation could be considered as a circumstance beyond his control. Applicant's scant favorable evidence is insufficient to show financial responsibility with respect to any of the debts alleged in the SOR.

Applicant's lack of financial responsibility shows he is not aware of what is required of him to establish eligibility for a security clearance. 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 50-year-old employee of a defense contractor since 2009. He has 11 outstanding debts that became delinquent between 2006 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.k:	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