



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



In the matter of:)
)
) ISCR Case No. 11-15005
)
Applicant for Security Clearance)

Appearances

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

02/03/2014

Remand Decision

RIVERA, Juan J., Administrative Judge:

Applicant has five outstanding debts that became delinquent between 2008 and 2012. He failed to submit sufficient documentary evidence to establish financial responsibility in the handling of his financial obligations.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 5, 2011. On April 10, 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 May 8, 2013, and requested a hearing before an administrative judge.

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 case was assigned to me on June 17, 2013. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on June 20, 2013, scheduling a hearing for July 24, 2013. At the hearing, the Government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and presented three original documents for my review at the hearing. The original documents were not offered or marked as evidence. Applicant promised to submit copies of the three documents post-hearing. He was allowed until August 9, 2013, to submit any documents to supplement the record. DOHA received the hearing transcript (Tr.) on August 7, 2013.

On November 12, 2013, I denied Applicant's request for a security clearance. Applicant appealed because post-hearing documents he mailed on August 7, 2013, were not considered before I issued the decision. On January 24, 2014, the Appeal Board remanded the case.

Applicant's August 7, 2013 mailing, which included five, one-page documents, was fully considered before I issued the remand decision. The five documents were made part of the record and marked as follows: Applicant Exhibit (AE) 1 (letter, dated June 22, 2013, concerning a student loan); AE 2 (letter, dated April 17, 2013, concerning a wireless provider collection, which was paid in full in February 27, 2013); AE 3 (letter, dated March 27, 2013, indicating that Applicant's \$3,000 student loan was paid-in-full); AE 4 (letter, dated March 27, 2013, indicating that Applicant's \$1,750 student loan was paid-in-full); AE 5 (a database printout with the heading of Overview Garnishment Document, showing 10 garnishments with their apparent end dates).

Findings of Fact

Applicant admitted all the factual allegations in the SOR, with explanations. His admissions are incorporated herein 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 29-year-old employee of a defense contractor. He married his wife in October 2005, and they separated in September 2008. He has no children. He served on active duty in the U.S. Navy from August 2003 to August 2008. He was honorably discharged as a third class petty officer.

Applicant attended college via the Internet from August 2008 until February 2009. He used his GI Bill benefits to pay for his college courses. However, he failed to complete several courses, and he now owes several student loans.

Following his discharge, Applicant worked for a government contractor from September 2008 until August 2009. Applicant testified that he was granted access to classified information at the secret level in September 2008. He was fired from his job in September 2009, because of his repeated failure to bring his identification card to work. Applicant found a part-time job, but was let go in April 2010, because of a disagreement

with the manager. Applicant did not want to work 25 hours a week; he only wanted to work 10 hours a week. He remained unemployed until he was hired by his current employer in July 2010.

Applicant disclosed in his May 5, 2011 SCA (Section 26 – Financial Record) that he had financial problems, which included delinquent loans, judgments, wage garnishments, delinquent federal debts, and debts over 90 days delinquent. The background investigation addressed his financial problems and revealed the seven delinquent debts alleged in the SOR, totaling over \$24,500. The SOR debts are established by the credit reports submitted by the Government and by Applicant's testimony.

In May 2011, Applicant was interviewed by a government background investigator and questioned about the delinquent debts alleged in the SOR. Applicant acknowledged the SOR debts. He explained that his financial problems were the result of a decrease in his income after his discharge from the Navy, his getting fired from his job in September 2009, and his inability to find a permanent job until he was hired by his current employer in July 2010. He did not have sufficient income to pay his day-to-day living expenses and his accumulated debts.

Applicant testified that after he lost his job in 2009, he contacted some of his creditors to let them know he was unemployed, and to set up some payment plans. He was unable to establish payment plans because some of the creditors wanted a substantial down payment up front before starting the payment plan. While unemployed, Applicant received unemployment benefits, but the money he received only covered his day-to-day living expenses. He did not have sufficient money to make any debt payments.

Applicant also stated that several creditors secured judgments against him and initiated wage garnishments. Because of the wage garnishments, he did not have sufficient income to make payments on any of the other delinquent debts. He is waiting to pay some of the judgments (through wage garnishment) first, and then he intends to contact other creditors to make payments arrangements.

The status of the alleged SOR debts is as follows:

SOR 1(a) (\$4,837) – Applicant obtained a car loan in 2004. He claimed he paid his car loan payments until he was fired in September 2009. He tried to return the car to the creditor, but the creditor refused to take it back. The car was not working, and he abandoned the car when he changed residences. The car was impounded by the city in July 2008. Applicant claimed he contacted the creditor in 2013 to set up a payment plan. The creditor asked for a large sum of money up front before starting the payment plan. He did not have the money to make the down payment.

SOR 1(b) (\$7,797) – Applicant obtained a personal loan in 2006. He could not afford to pay it after he was fired from his job in September 2009. Applicant claimed he

was making sporadic payments when he could afford it. The creditor obtained a judgment against Applicant in November 2010, and garnished his wages. Applicant claimed his last contact with the creditor was in April 2013.

SOR 1(c) (\$1,540) – Applicant and his roommate failed to pay their apartment rent and were evicted. The landlord obtained a judgment against them in June 2009. Applicant claimed he was in contact with the creditor. He failed to present documentary evidence of any contacts or payments to the creditor.

SOR 1(d) (\$2,590) – Applicant used his VA benefits to finance two student loans in 2008. He failed the college courses, and he has to repay the student loans. Around May 2013, Applicant entered into a payment agreement with the collection agency. He made one payment in May 2013, and was notified that a second payment was scheduled to be taken out of his bank account. (AE 1) He presented no documentary evidence of payments or contacts with the creditor between 2008 and May 2013.

SOR 1(e) (\$1,000) – Applicant claimed that this debt is included in the debt alleged in SOR 1(b). The credit reports identify the debts as separate collections. Applicant failed to present documentary evidence to support his claim.

SOR 1(f) (\$126) – Applicant testified this debt pertains to another student loan he obtained in 2008. He claimed he made sporadic payments, but stopped making payments when he was fired from his job in 2009. Applicant was sued, failed to appear in court, and the creditor obtained a judgment against him. In March 2013, the debt was paid through a wage garnishment. (AE 3, 4)

SOR 1(g) (\$6,673) – This is a delinquent credit card account Applicant opened to purchase furniture for his apartment and a laptop to use in a deployment. He stopped making payments when he lost his job. The debt is being paid through a garnishment of his wages. He presented no documentary evidence of payments or contacts with the creditor prior to the garnishment of his wages.

Applicant testified that he tried to get his finances in order. He claimed that he obtained a credit report to identify his delinquent debts. He also claimed that he tried to retain the services of a debt management firm, but it did not work out. He stated that because of the different wage garnishments, he did not have the money to pay the debt management firm, or to make any payments to other creditors.

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 his net monthly income is \$2,388. His monthly net remainder was between \$700 and \$1,000, after paying \$1,300 in monthly expenses. He listed no debt payments. Applicant intends to pay some of his debts with overtime, which he anticipates will be available to him in the near future.

Applicant testified that he wants to pay his delinquent debts. He needs his security clearance to retain his job to be able to pay his debts. Outside of the payments he made through wage garnishments, Applicant presented little documentary evidence to show that he maintained contact with his creditors, established payment plans, or disputed any of the SOR debts. He presented no documentary evidence to show he has received financial counseling. He claimed that he received some financial counseling when he tried to retain the services of a debt management company. He failed to present documentary evidence of any contacts with a debt management company. Applicant testified he recently started a budget, but did not present the budget document. He also claimed that in June 2013, he started a savings account to accumulate money to pay his delinquent debts. He stated he has \$300 in the account. He presented no documentary evidence to support his claim.

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 that the seven delinquent debts alleged in the SOR, totaling over \$24,500, became delinquent between 2008 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; 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 July 2010, and has a net monthly income of around \$2,388. Outside of the garnishment of wages to pay for some of his delinquent debts, he presented little documentary evidence of any debt payments, contacts with creditors, disputes, or that he otherwise attempted to resolve his debts. Additionally, it is not clear whether he participated in financial counseling or has a budget.

Applicant was interviewed in May 2011 by a government investigator, and questioned about his financial problems. Even though he was placed on notice about the concerns about his financial problems, he failed to make a convincing effort to resolve his delinquent obligations.

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, after he left the service, he separated from his wife, and he was fired from his job in September 2009. Notwithstanding, the main reasons for Applicant's financial problems were that he was fired from his job in 2009, and his inability to retain employment thereafter. Applicant did not act responsibly under the circumstances as he failed to prove he attempted in good faith to establish payment plans or otherwise resolve his delinquent debts without being garnished. Moreover, Applicant's 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 29-year-old employee of a defense contractor since 2010. He honorably served five years in the U.S. Navy. He has five outstanding debts that became delinquent between 2008 and 2012. He failed to establish financial responsibility in the handling of his financial obligations. He receives credit for seeking a job with a government contractor in July 2010. However, he failed to present any evidence to show that he used his earnings to pay any of his outstanding delinquent debts, except through wage garnishments.

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.c, 1.e, 1.g:	Against Applicant
Subparagraphs 1.d, 1.f:	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