



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



In the matter of:)
)
) ISCR Case No. 12-00639
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2013

Decision

RIVERA, Juan J., Administrative Judge:

The evidence is insufficient to establish that Applicant had a judgment filed against him in March 2010, or that he owes \$17,000. He did not deliberately falsify his security clearance application (SCA). Clearance is granted.

Statement of the Case

Applicant submitted his SCA on August 5, 2010. On December 3, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).¹ Applicant answered the SOR on January 7, 2013, and requested a hearing before an administrative judge.

¹ 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 February 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 25, 2013, scheduling a hearing for April 18, 2013. At the hearing, the Government offered exhibits (GE) 1 through 5. Applicant testified and submitted exhibits (AE) 1 through four. AE 4 was received post-hearing. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on March 26, 2013.

Procedural Issue

At the hearing, Department Counsel moved to amend SOR ¶ 1.a to correct a typographical error. She moved to delete from the second line of the allegation the figure "2012," and substitute therein "2010." Applicant did not object, and I granted the motion as requested. (Tr. 13-14)

Findings of Fact

Applicant denied the two SOR allegations under ¶¶ 1.a and 2.a. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 28-year-old mail clerk employed with a government contractor. After graduating from high school, he attended college and accumulated approximately 36 college credits. He has never been married, and has no children. He has been living with his mother since 2004. He explained that he moved out on his own for a short period, but returned to live with his mother to save money and be able to handle his financial situation.

Applicant was hired by his current employer, a government contractor, in August 2008. He claimed he has held access to classified information at the secret level from 2008 to present. 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.

Section 26 (Financial Record) of Applicant's August 2010 SCA, asked him to disclose whether in the last seven years he had any financial problems. He answered "No" to all the financial questions. SOR ¶ 1.a alleges that Applicant has an unpaid \$17,000 judgment filed against him on March 29, 2010. SOR ¶ 2.a alleges that he deliberately failed to disclose the March 2010 judgment in his August 2010 SCA.

A 2010 credit report (GE 5) provides prima facie evidence that a judgment was filed against Applicant in March 2010. Applicant was interviewed by a government investigator in September 2010. During the interview, he was asked whether he had any delinquent debts or judgments filed against him. Apparently, Applicant disclosed the judgment alleged in SOR ¶ 1.a, and a \$600 delinquent credit card account, which had been delinquent for over four years (not alleged in the SOR). (GE 2) He also disclosed

periods of unemployment while in high school (2000-2004), from June 2006 until February 2007, and from May 2008 until August 2008. Applicant's current net monthly income, after paying monthly expenses, is \$1,047.

Concerning the March 2010 judgment, Applicant explained that in 2009, he and his mother were sharing a car. Applicant's mother owns and insured the car. He drove the car with a suspended driver's license because he had failed to pay a traffic ticket. He was involved in an accident and his mother's insurance company refused to provide coverage. The other party's insurance company filed suit against Applicant's mother. Applicant and his mother were aware of the suit, consulted with counsel, but did not appear in court because they were told that they would lose the lawsuit. The court found his mother liable and granted a \$17,000 judgment against her.

Regarding his failure to disclose the judgment in his August 2010 SCA, Applicant credibly testified that he did not know that he was included in the judgment. He believed that only his mother was named in the judgment. I note that the court records and correspondence documents admitted into evidence indicate Applicant's mother as the sole defendant in the lawsuit, and as the subject of the collection action. (GEs 2, 3, and AE 1-4) None of the documents refer to Applicant as being part of the lawsuit or the collection action. I also note that the September 2012 credit report (GE 4) does not reflect a judgment filed against Applicant. Additionally, all payments made to the insurance company have been made by Applicant's mother.

Although the 2010 credit report establishes prima facie the filing of a judgment against Applicant in March 2010, the more specific documents - the court records and correspondence documents - rebut the 2010 credit report. Considering the evidence as a whole, I find that the evidence is insufficient to establish that a judgment was filed against Applicant in March 2010.

I considered Applicant's statement to the investigator, his answer to the DOHA interrogatories, and his testimony wherein he admitted owing \$17,000 to the insurance company and having a judgment filed against him. Notwithstanding, the most reliable evidence - the court and correspondence documents - show that the lawsuit and judgment were filed against Applicant's mother. He was not named as a party to either action. Applicant may believe that he is financially responsible to his mother and the insurance company for the accident, and he may be giving his mother the money to make the payments; nevertheless, the evidence does not establish his financial liability.

Applicant's only delinquent debt is a credit card account, owing \$600, which he opened when he was in college. This debt was not alleged in the SOR. Applicant acknowledged that the credit card was delinquent because of his lack of financial responsibility. Apparently, he stopped paying it during a period of unemployment, but should have started paying it when he became employed. He forgot about it with the passage of time. He testified that he now has the financial means to pay it and that he intends to pay it in the near future. Applicant failed to disclose his delinquent credit card debt in his August 2010 SCA. (Tr. 45-46)

Concerning his failure to disclose the credit card delinquent debt in his SCA, Applicant explained that it had been so long since the account became delinquent that he forgot about it. Applicant averred he had no intention to mislead or falsify his security clearance application. He noted that he was candid and forthcoming during his September 2010 background interview and discussed both debts with the investigator.

Except for the judgment and the credit card debt, the admitted credit reports show a history of financial stability, and that he has been living within his financial means. Applicant expressed sincere remorse for driving with a suspended driver's license, and for not being more diligent paying the judgment and the credit card debt. He likes his job and would not like to lose it. He promised to continue making payments on the judgment and to pay off the credit card debt. Applicant considers himself to be honest, trustworthy, and a dedicated employee. He is punctual and a good worker. He needs his security clearance to retain his job, and the ability to pay his debts. Applicant presented no evidence to show he has participated in financial counseling.

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 available evidence failed to establish that a \$17,000 judgment was filed against Applicant in March 2010. Even considering the not alleged delinquent credit card account, the evidence does not show Applicant has a financial problem. None of the financial considerations disqualifying conditions apply.

Applicant promised to pay his credit card debt as soon as possible. His credit reports show a history of financial stability. Applicant likes his job and would like to continue working for his employer. I have no questions about Applicant’s current financial situation and his ability and willingness to resolve his debt. On balance, the available evidence is sufficient to mitigate the security concerns regarding Applicant’s financial responsibility.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleges Applicant falsified his August 2010 SCA when he failed to disclose that a judgment was filed against him in March 2010. In light of the court and correspondence documents, Applicant’s mother was the only party to the lawsuit and

collection action. The evidence is insufficient to show Applicant had a judgment filed against him in 2010.

Applicant should have disclosed his delinquent credit card debt, and I have considered this fact in assessing his credibility and his case in mitigation. Applicant was candid and forthcoming discussing this debt during his September 2010 interview and at his hearing. Considering the record as a whole, I believe Applicant made an honest mistake and did not remember the four-year-old credit card debt. Applicant promised to contact the creditor and start paying the debt. In light of the above findings, I find for Applicant on the personal conduct security concerns.

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, 28, has worked as a mail clerk for a government contractor while possessing a security clearance since 2008. He considers himself to be a good, productive employee. Except for the current security concerns, there is no evidence of any problems or concerns while he possessed a security clearance. He demonstrated bad judgment by driving with a suspended driving license and getting involved in an accident.

As a result of the security clearance process, Applicant is now fully aware that he is required to maintain financial responsibility to be eligible for a security clearance and to keep his job. Applicant promised to make timely payments in the future to resolve his debts. Considering the record as a whole, Applicant is in control of his financial situation and has no financial problems.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge