



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



In the matter of:)	
)	
)	ISCR Case No. 12-02091
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant established financial responsibility by paying some of his delinquent debts, although not the two debts alleged in the SOR. Clearance granted.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on October 13, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant's eligibility for a clearance. On May 18, 2015, 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 June 18, 2015 (Answer), and requested a hearing before an administrative judge. Attached to his Answer, he submitted documents disputing the SOR allegations.

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 October 28, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 2, 2015, scheduling a hearing for November 20, 2015. At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified and submitted four exhibits (AE 1 through 4). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on December 2, 2015.

Findings of Fact

In his Answer to the SOR, Applicant denied the SOR allegations. After a thorough review of the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 50-year-old technologist working for a federal contractor. He graduated from high school and attended college during 2000 and 2003, but did not earn a degree. He enlisted in the U.S. Air Force in 1987, where he served on active duty until he was honorably discharged in March 2001. At the time of his discharge, he held the rank of staff sergeant (E-5). He then joined the Active Reserve where he served until he was honorably discharged in May 2007. He married his first wife in 1987 and divorced in 1991. He married his second wife in 1996 and divorced in 2003. He is currently single, and he has no children.

Applicant has about 29 years of combined service and work for government contractors. After his discharge from the Air Force in 2001, he has worked for six different federal contractors in technology-related positions. He held a security clearance in the Air Force, which was continued to present because of his work for federal contractors. Applicant has held a top secret security clearance since 2007. There is no evidence of any security infractions or concerns. He has been working for his current employer, a federal contractor, since September 2014. Applicant testified that he would never do anything to harm the United States. He has always worked diligently to fulfil his work requirements and legal obligations. He believes that he is considered to be a valuable employee.

In October 2014, Applicant submitted his most recent SCA requesting the continuation of his clearance. In his response to Section 26 (Financial Record), he disclosed no financial problems. The subsequent security background investigation revealed the two delinquent accounts alleged in the SOR, totaling approximately \$117,000.

Applicant explained that he purchased a home in 2003 and sold it for \$535,000 in 2006 (property B). He then purchased a second home in 2006-2007, for about \$800,000 (property A). His financial problems started around 2007-2008. His mother was taking care of his grandmother, when his mother was diagnosed with cancer. He helped them both financially by paying some of their medical and living expenses. Apparently, he took a second mortgage on one of his properties to help his mother and grandmother financially.

Applicant stated that he worked a second full-time job to increase his earnings and be able to pay his mortgages and other debts. Between his two jobs, he was earning about \$120,000 a year. The contract for his primary job ended, and he had a pay cut of about \$22,000. With his reduced earnings, he no longer had the income required to pay the mortgages. At about the same time, a tenant in another of his properties stopped paying the rent, and that home also fell behind on the mortgage. Applicant realized that it had been foolish on his part to purchase a second home and then have to take a second job to pay the mortgages. While his mother was sick, Applicant was unable to work two jobs, because he traveled frequently to another state to visit and care for his mother. (GE 1, Tr. 36)

Applicant testified that when he could not afford the mortgage, he contacted the mortgage creditor and asked for a loan modification, but the bank refused and started foreclosure proceedings. Because of the downturn of the real estate market, a short sale of the property was not possible, and the home was foreclosed in 2009.

The status of the alleged SOR delinquent accounts follows:

SOR ¶ 1.a alleged a past-due second mortgage in the amount of about \$12,582, with a total balance of \$100,708. This was a second mortgage (on property A) that Applicant took either to purchase his home or to use the money to support his mother. This debt is unresolved. At his hearing, Applicant presented documents showing that he sold property B and paid the mortgage balance. At his hearing, Applicant appeared to be confused about his properties, and claimed that the settlement documents for property B applied to property A. However, it is clear from the record documents that property A was foreclosed in 2009, the second mortgage alleged in SOR ¶ 1.a concerned property A, and it is outstanding. In his January 2012 interview with a government investigator, Applicant admitted that the debt alleged in SOR ¶ 1.a was for a second mortgage for property A.

SOR ¶ 1.b alleged a \$16,000 charged-off credit-card account. Applicant disputed this debt and claimed he did not open the credit-card account, and that it was not his debt. Notwithstanding his present claims and dispute, during his January 2012 statement to a government investigator, Applicant admitted that the debt alleged in SOR ¶ 1.b was his credit-card debt. At the time of the interview, Applicant promised to contact the creditor and establish a payment plan.

I note that at the time of his January 2012 interview, Applicant was questioned about nine delinquent accounts, some of which were also reflected in the 2014 credit report. (GE 4) The 2015 credit report shows that Applicant paid six of those delinquent debts, except for a \$1,600 delinquent debt dating back to 2009; a \$277 delinquent debt dating back to 2012; and the two delinquent debts alleged in the SOR.

At his hearing, Applicant disclosed that he withdrew money from his TSP account, and now he owes the IRS about \$25,000. He testified that he has been in contact with the IRS and they are in negotiations to establish a payment plan. It is not

clear whether the TSP money was withdrawn to help his mother or to try to prevent the foreclosure of his home.

Applicant believes that his work history and past behavior show that he has been a reliable, trustworthy, and responsible federal contractor and employee. There is no evidence to show that he has any other outstanding IRS debts, or that he has failed to timely file his tax returns. Applicant expressed remorse for his financial situation. He believes he has learned a valuable lesson. He understands that he is required to maintain financial responsibility to remain eligible for a security clearance and to retain his job. Applicant highlighted his years in the service, and his many years working for government contractors while possessing access to classified information without any security concerns, except for those alleged in the current SOR.

Applicant testified that he has worked hard to fix his financial problems. He pays his debts on time, eliminated all unnecessary expenses, and his income is sufficient to pay his living expenses. He has been applying for part-time jobs to supplement his income and pay his debts quickly. He believes that his financial situation has improved substantially. He believes he is not in a position that would make him susceptible to blackmail, coercion, or undue influence. He promised to maintain his financial responsibility.

Applicant testified that he no longer uses any credit cards. He has been earning around \$90,000 a year since June-July 2015. Before his recent pay increase, he was making about \$70,000 a year. His monthly take home pay is around \$4,800. He has the following monthly expenses: rent - \$1,800; car payment - \$580; car insurance - \$170; and utilities - \$380. Applicant has about \$1,500 left over at the end of the month. (Tr. 61)

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)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's two delinquent debts raise the applicability of the following financial considerations disqualifying conditions: AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations."

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) partially applies, but does not fully mitigate the concerns. Applicant's financial problems are recent and ongoing.

I considered that Applicant may have been negligent when he purchased a home above his financial means. However, he had two jobs and was able to make his mortgage payments for some time until his employer lost one of Applicant's contracts and his earnings were reduced by about \$22,000. Additional circumstances beyond his control contributed to his financial problems – the downturn of the real estate market, his inability to modify his mortgage, and his mother's illness.

Applicant has two delinquent accounts that have been delinquent since around 2009. Nevertheless, when Applicant was interviewed in 2012, he had nine delinquent accounts. The 2015 credit report (GE 5) shows that Applicant resolved six of those delinquent accounts. Considering the evidence as a whole, I find Applicant has shown sufficient financial responsibility for AG ¶ 20(b) to apply.

AG ¶¶ 20(c) and (d) apply, in part. There is no evidence Applicant participated in financial counseling. However, Applicant has been making efforts to resolve his delinquent debts. He has gained a better grasp of his financial situation and his finances appear to be under control. With his current job earnings, Applicant will be able to establish viable payment plans to address the remaining debts alleged in the SOR. Considering the evidence as a whole, Applicant has shown financial responsibility and sufficient progress in the resolution of his debts.

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). I have incorporated my comments under Guideline F in my whole-

person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 50-year-old employee of a federal contractor. His financial problems were caused, in part, by circumstances beyond his control: the reduction of his pay; the downturn of the real estate market; and his mother's terminal illness. He established financial responsibility by maintaining contact with his creditors and paying some of the debts he acquired at the time of his home foreclosure in 2009. He understands that he is required to maintain financial responsibility to remain eligible for a security clearance. For all these reasons, I believe that Applicant will continue to responsibly pay his debts and maintain his financial responsibilities.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

[T]he concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a "meaningful track record" of debt re-payment, and I believe he will maintain his financial responsibility.²

²The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E (personal conduct), and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [the applicant] the opportunity to have

On balance, and considering the facts and circumstances in the context of the whole person, I find that Applicant mitigated the financial considerations security concerns.

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

Subparagraphs 1.a - 1.b: 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

a security clearance while [the applicant] works on [his or] her financial problems.”). This footnote does not imply that this decision to grant Applicant’s security clearance is conditional.