



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



In the matter of:)
)
) ISCR Case No. 12-05597
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

12/09/2016

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to show that he has a track record of financial responsibility, and that his financial problems are under control. He failed to mitigate the Guideline F (financial considerations) security concerns. Clearance is denied.

History of the Case

Applicant submitted his most recent security clearance application (SCA) on November 11, 2014. On December 13, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on January 6, 2016, and requested a decision based on the written record.

A copy of the Government’s file of relevant material (FORM), dated March 7, 2016, was provided to Applicant by transmittal letter dated March 8, 2016. Applicant received the FORM on March 21, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the FORM or submit any additional evidence. The case was assigned to me on December 6, 2016.

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.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from January 28, 2013. Applicant was informed he could object to the summary of his interview and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, and he raised no objections. I admitted the document and considered it.

Findings of Fact

In Applicant's response, he admitted the three SOR factual allegations - delinquent accounts totaling over \$51,000. Applicant's SOR admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor. He graduated from high school in 1989, and attended a community college between 2010 and 2013, where he received an associate's degree. He married in 1997, and has a 19-year-old daughter and two stepsons, ages 26 and 23.

Applicant enlisted in the U.S. Navy in 1989 and honorably served until he retired in 2009. After his retirement, he worked for a private company for about six months. At the same time, he worked as a security officer for a federal contractor (A) between 2009 and 2013. He left that employment for a period to work on a more lucrative contract. He resumed working for (A), his current employer, in April 2014. Applicant was granted a secret clearance while serving in the Navy starting in 1989, and a top secret clearance starting in 2004-2005.

In response to Section 26 (Financial Record) of Applicant's 2014 SCA, Applicant disclosed that he had financial problems and revealed one delinquent debt in collection for \$3,335. He stated that the creditor obtained a judgment against him in 2013, and he was paying it through a court-ordered garnishment of wages. Applicant claimed that as of June 2014, he owed about \$800 and he anticipated paying the debt in full within three months.

Applicant stated in his 2014 SCA that his wife was in charge of the family finances while he was deployed during his Navy service. He claimed that due to family problems, she failed to pay the bills. Applicant averred that he was now in control of the family finances and was trying to bring everything up to date. The subsequent investigation uncovered additional delinquent debts.

Applicant was interviewed by a government investigator in January 2012 and confronted about his then financial problems. Applicant disclosed he filed for Chapter 13

bankruptcy protection in 2002, converted to a Chapter 7 in 2004, and was discharged of all dischargeable debts in 2004. He told the investigator that he had to file for bankruptcy protection because he and his wife had maxed out their credit cards over a period and now were only making minimum payments.

During his 2012 interview, Applicant was confronted with 12 delinquent accounts that he had acquired since his 2004 bankruptcy discharge. Applicant told the investigator that his wife was suffering from depression and was not paying the bills. He claimed he found out about the financial problems in 2009, and was working to resolve them. He averred he had contacted the creditors to make settlement agreements, and stated his intent to pay the debts one at a time until he paid them all.

In June 2015, Applicant was interviewed again by a government investigator and questioned about his financial problems. Concerning the judgment disclosed in his 2014 SCA, Applicant stated the creditor attempted to collect but he did not have the money to pay. The creditor obtained the judgment and garnished his earnings. Applicant also was questioned about 14 delinquent or in collection accounts. He claimed that four of the accounts were discharged through bankruptcy in 2004, and he did not recognize a \$1,000 judgment filed against him.

Concerning the remaining 10 delinquent accounts, Applicant claimed that he had contacted all the creditors and had been actively working with them to settle the accounts. Applicant noted that he did not have any written payment agreements with any of the creditors. As of June 2015, he had not participated in any financial counseling.

Applicant attributed his financial problems to his wife's mismanaging the family finances. He explained he spent a lot of time at sea and claimed he was not aware of his financial problems. He claimed that family emergencies caused his wife to fall behind on her payment of the debts. Applicant told the investigator during his 2015 interview that he did not disclose all of his delinquent accounts in his 2014 SCA because "he had not thought that they were required to be included."

Applicant's investigation revealed the three delinquent accounts alleged in the SOR. Applicant's admissions to the SOR allegations, his June 2015 summary of interview, and the record credit reports establish the debts alleged in the SOR. Applicant presented no documentary evidence to show that he has been in contact with his creditors, or that he attempted to settle, pay, or otherwise resolve his delinquent debts. He provided no information about his current financial position. He did not provide any information about his current income, monthly expenses, and whether his income is sufficient to pay his living expenses and debts. There is no information to indicate whether he has participated in financial counseling or whether he follows a budget.

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

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 history of financial problems is documented in his credit reports, SOR response, and 2015 summary of interview. The evidence establishes the three delinquent accounts alleged in the SOR, totaling over \$51,000. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The

standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the financial considerations mitigating conditions apply. Applicant’s financial problems are recent and ongoing. He presented no evidence to show that his financial problems are under control, and that his debts were incurred under circumstances unlikely to recur. Applicant presented no evidence of efforts taken to remain in contact with his creditors, or of efforts he has taken to pay or resolve his delinquent debts. His evidence is insufficient to establish that circumstances beyond his control contributed to or aggravated his financial problems. Furthermore, Applicant failed to establish that he was financially responsible under the circumstances.

Applicant submitted his SCA in 2014 disclosing only one delinquent debt. He claimed he did not believe he had to disclose his other delinquent debts at the time he completed his SCA. In 2012 and 2015, he participated in government interviews where he was asked about his financial problems. At that time, he acknowledged his financial problems, claimed he was in contact with his creditors, and promised to address his delinquent debts and work toward resolving them. He failed to submit any documentary evidence to support his claims.

Applicant was in the service and submitted SCAs at least since about 1989, when he was granted a security clearance. He was made aware of the Government’s financial considerations security concerns during his 2012 and 2015 interviews. He was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. He failed to provide any documentary evidence to show he has been in contact with his creditors, or that he attempted to settle, pay, or otherwise resolve his delinquent debts since he acquired them. Applicant also failed to establish that he has sufficient income to keep his debts in current status and to continue making progress paying his delinquent 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 Guideline F, but some warrant additional comment.

I considered Applicant’s honorable service and his years working for federal contractors. Notwithstanding, Applicant did not submit sufficient evidence to show his financial responsibility. Applicant submitted no documentary evidence of payments to the SOR creditors or of efforts to resolve his debts. There is insufficient evidence of progress addressing his financial problems. The available information is insufficient to establish

clear indications that he does not have a current financial problem, or that his financial problems are being resolved, or are under control. Applicant failed to establish that he has a track record of financial responsibility.

Once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. The financial considerations security concerns are not mitigated.

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:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge