



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



In the matter of:)
)
) ISCR Case No. 12-10545
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

03/21/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant should have been more diligent in taking action to resolve his financial problems. Under the totality of the circumstances of this case, Applicant's evidence is insufficient to establish his financial responsibility. Financial considerations concerns are not mitigated. Access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on January 16, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on April 30, 2015, issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on June 23, 2015 (Answer), and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

¹ The DOD acted under Executive Order (EO) 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.

Department Counsel was ready to proceed on September 30, 2015. The case was assigned to me on March 3, 2016. Applicant was deployed overseas and requested a hearing in August 2016. DOHA issued a notice of hearing on July 11, 2016, scheduling the hearing for August 3, 2016. The hearing was held as scheduled. Government exhibits (GE) 1 through 3, and Applicant's exhibits (AE) A through S, were admitted into evidence without objection. AE S was received post-hearing. GE 4 was marked and made part of the record, but not as evidence. On August 12, 2016, DOHA received the transcript of the hearing.

Findings of Fact

In Applicant's response, he denied all of the SOR allegations. He also made some partial admissions to some of the SOR factual allegations and provided extenuating and mitigating information. Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact.

Applicant is 36 years old. He graduated from high school and attended college where he received an associate's degree in 2004. He also served honorably in the Air Force Inactive Reserve from 2000 to 2004. While in the Air Force, he was granted a secret clearance in 2002. Applicant married his wife in 2012. She is a registered nurse with a current income of around \$60,000. His current income is around \$61,000.

Applicant initially claimed that after his discharge, he had difficulty finding a full-time job. He testified that most of his SOR delinquent debts originated during this two-year period of underemployment. He also claimed his financial problems were due to him providing financial assistance to his then girlfriend with whom he used to gamble at least twice a year. Additionally, he claimed that between 2000 and 2015, he provided substantial financial support to his mother in another country.

The evidence shows that between November 2004 and April 2007, Applicant worked for a hiring agency and was assigned to work full time as a temporary employee with his current employer. Applicant was hired by his current employer, a federal contractor, in 2007. (Tr. 24)

Applicant submitted his most recent SCA in 2012. In response to Section 26 (Financial Record) of the SCA, Applicant disclosed he had been either disciplined, counseled, or warned about failing to make timely payments on an employer-provided credit card. He averred he had paid the debt. Applicant also disclosed other delinquent debts including credit cards, a medical debt, and student loans. He hired the services of three different debt settlement, counseling, or disputing companies to help him pay or resolve some of his delinquent debts.

Applicant's security investigation addressed his financial problems and revealed the seven SOR debts, totaling over \$67,000. Applicant's history of delinquent debt is documented in his credit reports, his SOR response, and his testimony. The status of his SOR debts is as follows:

SOR ¶ 1.a alleges Applicant's delinquent energy bill from 2010 for \$63. Applicant claimed he left for an overseas assignment in 2009 without receiving the final bill. He claimed he paid the bill over the phone in April 2010. He submitted a notice of delinquency from the creditor with a handwritten note indicating the alleged payment date and a payment confirmation number. (AE S, Tab D) The debt still shows as a charged-off account in Applicant's 2014 credit report. (GE 2)

SOR ¶ 1.b alleges a 2010 tax lien filed against Applicant by his state for the overpayment of unemployment benefits for \$2,700. Applicant initially claimed he was underemployed between 2004 and 2007. He further claimed he was disputing the total amount of the state's tax lien. Under cross-examination, Applicant admitted that although he was employed through a hiring agency, he was working full-time and had no periods of unemployment after his discharge. Applicant further admitted he received unemployment benefits while working full time. His then employer, the hiring agency, filed a complaint against Applicant with the state authorities disputing Applicant's unemployment claims. The state then initiated legal action against Applicant to recover for overpayment of unemployment benefits.

Applicant claimed he learned about the 2010 state tax lien against him when he started the process to renew his security clearance in 2012. When asked about the efforts he has taken to resolve or dispute SOR ¶ 1.b, Applicant testified he has been making phone calls to contact the correct person to file the complaint. So far, he has been unsuccessful. He has filed no written dispute. The tax lien is depicted in the 2014 credit report. (GE 2)

SOR ¶¶ 1.c and 1.d allege Applicant's two judgments for delinquent student loans, totaling \$41,016, made between 2005 and 2006. Applicant admitted the two debts were his student loans and submitted documentary evidence showing he made six payments of \$468 each in 2008, and seven payments of \$500 each in 2009. He presented no other documentary evidence of payments made after 2009. Applicant testified he hired two debt resolution companies to help him pay his student loans, but their help was limited.

Applicant is currently disputing the student loans. He submitted two affidavits showing the lender lost his initial student loan applications. He claimed that after he made the payments in 2008 and 2009, he realized his payments were not applied to his student loan debt and decided to dispute the debts. Applicant now believes that the statute of limitations to collect the student loans has passed and he has an affirmative defense for any collection action against him. (AE S, Tab G) The two judgments are shown in his 2014 credit report. (GE 2)

SOR ¶ 1.e alleges a \$15,000 delinquent debt. Applicant claimed the debt was for dental services to his then girlfriend, which he cosigned. A 2012 credit report (GE 3) shows this as Applicant's individual credit card debt that was charged off.

Applicant claimed he paid the debt in 2009, and submitted two documents reflecting purported payments to company "N" in December 2008 (\$2,267), and in January 2009 (\$3,778). Applicant's documentary evidence fails to show that he paid the

debt alleged in SOR ¶ 1.e. The documents submitted show that company N asked Applicant to ensure he had money in his checking account before they initiated a withdrawal. There is evidence the first withdrawal was completed; however, the evidence does not show the second withdrawal was accomplished. Nor is there evidence that he settled the account for less and paid it. Furthermore, Applicant's documents failed to make the connection between company N and the creditor alleged in the SOR ¶ 1.e. He may have paid another creditor, but it is not clear whether he paid the creditor alleged in SOR ¶ 1.e. (See AE S, Tab H)

SOR ¶ 1.f alleges a \$6,500 delinquent debt for a credit card. Applicant claimed he paid the debt. His documentary evidence established that a debt resolution company negotiated a settlement of the debt for \$2,904 in 2012. However, Applicant failed to submit documentary evidence to show that he paid the agreed settlement. (AE S, Tab I)

SOR ¶ 1.g alleges a \$1,214 delinquent debt to a phone services provider. Applicant claimed he paid the debt. As documentary evidence he submitted two documents from the collection agency from July and August 2012, asking Applicant to ensure he had money in his checking account prior to "a pre-approved draft in the amount previously agreed upon" being sent to his account. The first payment was made since the debt was reduced by \$606. However, he presented no evidence to show the second payment was made and the debt was paid. (AE S, Tab J)

Applicant believes he has been making improvements resolving his financial problems. He considers himself more mature and responsible. He has taken budgeting and financial management courses to help him resolve his financial problems. He and his wife's combined incomes are sufficient to resolve his delinquent debts and pay for their living expenses. Applicant had other debts not alleged in the SOR that he has resolved and he is in the process of becoming financially stable. He testified that he is motivated to resolve his financial problems. He claimed that many of his delinquent debts were paid or have been resolved. He needs his clearance and current job to continue paying his debts.

Applicant noted he obtained financial counseling thrice from different companies. Currently, he is keeping his own budget and managing his expenses. Applicant does not consider himself a security risk. He served in the Air Force Reserve and continues to serve U.S. interests while working for a Government contractor sometimes overseas under dangerous conditions. He noted the certificates of appreciation and recognition awards he has received from his employer. The documents show Applicant is considered to be a good employee who makes valuable contributions to his employer.

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

AG ¶ 18 articulates the security concern relating to financial problems:

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.

Applicant's history of financial problems is documented in his credit reports, his SOR response, his testimony, and the record evidence. 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 record 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;² 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

² The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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).

Applicant acknowledged some of his delinquent debts. He paid one SOR creditor in 2010 (1.a), and two creditors in 2012 (1.f and 1.g). I have credited Applicant with mitigating those three accounts. Additionally, there is evidence in the credit reports showing he has paid other debts not alleged in the SOR, and that he has acquired no additional delinquent debts. He sought assistance to resolve his financial problems three times, and seems to be in control of his current finances.

Notwithstanding, Applicant received unemployment benefits while being fully employed and has refused to pay back the money. He received two student loans, paid some money back in 2008-2009, but then waited to the passing of the statute of limitations to dispute them. He did not establish the applicability of the statute of limitations to his two student loan judgments. Additionally, he claimed he cosigned the debt alleged in SOR 1.e, when in fact it was his credit card debt. He claimed he paid the debt, but his documentary evidence failed to substantiate his claim.

Considering the evidence as a whole, including Applicant's demeanor while testifying, his past financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant should have been more diligent addressing his delinquent debts. His half-hearted efforts to pay his financial obligations are insufficient to mitigate the financial considerations security concerns. 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. The financial considerations security concerns are not mitigated.

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, but some warrant additional comment.

Applicant is 36 years old. He served in the Air Force Reserve for four years, and has worked for a federal contractor since 2007. He should have been more diligent in taking action to resolve his financial problems. Under the totality of the circumstances of

this case, Applicant's evidence is insufficient to establish his financial responsibility. Financial considerations 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:	FOR APPLICANT
Subparagraphs 1.a, 1.f, and 1.g:	For Applicant
Subparagraphs 1.b-1.e:	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 grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge