



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



In the matter of:

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ISCR Case No. 14-06596

Applicant for Security Clearance

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel

For Applicant: *Pro se*

01/24/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's foreclosed mortgage resulted from his divorce, a circumstance beyond his control. His clean 2014 credit report shows a track record of debt payment, and that he is in control of his financial situation. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on June 4, 2014. After reviewing it and the information gathered during a background investigation, on November 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 11, 2016 (Answer), and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM) was provided to Applicant by transmittal letter dated March 4, 2016. Applicant received the FORM on

¹ The DOD acted under Executive Order (Exec. Or.) 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.

March 16, 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 22, 2016.

Findings of Fact

Applicant did not admit or deny the SOR sole allegation. I considered the SOR allegation denied. In his Answer, he provided some evidence in extenuation and mitigation. After a thorough review of the record evidence, I make the following findings of fact:

Applicant is a 38-year-old employee of a federal contractor. He enlisted in the U.S. Navy in 1996, where he served on active duty until 1999. While in the service, he received a General Education Development (GED) certificate. Upon his discharge, he received a general under honorable conditions discharge. Applicant married in 2002 and divorced in 2010. He has two sons, ages 11 and 10, of this marriage.

Applicant has been working for his employer, a federal contractor, since 2002. There is no evidence of any security violations or issues of concern, except for the SOR allegation. This is his first application for a security clearance.

Section 26 (Financial Record) of the 2014 SCA asked Applicant to disclose whether during the last seven years he had any financial problems. Applicant answered "yes" and disclosed that he had been delinquent in a mortgage that was foreclosed. The subsequent background investigation confirmed the foreclosed mortgage alleged in the SOR, with a "past due" amount of \$46,804. Applicant's credit report, his 2014 statement to a government investigator, and his SOR answer established the SOR allegation.

During a July 2014 interview with a government investigator, Applicant explained that he and his then wife purchased a \$340,000 home in 2007, using his Veterans' Administration (VA) loan benefits. In 2009, when they separated, Applicant wanted to rent or sell the property. His then wife refused, continued living in the property, and claimed she would make the payments. She failed to make the payments and the past due payments accrued to \$46,804, when the bank foreclosed the mortgage in October 2010.

Applicant claimed that the past due payments balance of \$46,804 was written off by the bank after the foreclosure and sale of the house. He claimed that neither the VA or the bank are collecting the delinquent balance, and that he is not required to pay it back.

Applicant's financial problems were the result of his 2010 divorce. Applicant's file credit report only shows one blemish – the delinquent mortgage. In 2014, he admitted to the investigator he had another delinquent debt for medical services provided to his son. His ex-wife's medical insurance only covered part of the charge. She refused to pay the remaining debt, and the debt went into collection. When he found out about the collection in 2012, he immediately paid it.

Applicant's file credit report confirmed that he had no other delinquent accounts. He has a clean credit report with 34 trades and only one delinquent transaction – his mortgage. Based on the FORM evidence, it appears that Applicant's finances are stable, and he can meet his current financial obligations. There is no evidence to show that Applicant had any prior financial problems before his divorce. Because of his service experience and work for a federal contractor, Applicant understands that he is required to demonstrate financial responsibility to be eligible for a security clearance.

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 delinquent mortgage payments and the mortgage foreclosure are documented in his 2014 credit report, SOR response, and prior statement. The mortgage had a "past due" amount of \$46,804, at the time the mortgage was foreclosed. There is no evidence to show that Applicant was responsible for any mortgage deficiency balance after the property was foreclosed. Also, there is no evidence to show that either the bank or the VA are attempting to collect any money from Applicant after the foreclosure and sale of the property. Notwithstanding, the mortgage payments were delinquent for a period until the property was foreclosed and sold. The past due mortgage payments and the mortgage foreclosure raise financial considerations concerns.

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.

There is no evidence showing that Applicant had financial problems before 2010. His financial problems were caused by his 2010 divorce – a circumstance beyond his control. Applicant tried to rent or sell the house during the divorce, but his ex-wife refused to do so. He did not submit documentary evidence to show his efforts to rent or sell the property. However, considering the evidence as a whole, I find it is likely he did. There is no evidence to show that the bank or the VA are collecting the “past due” mortgage payments. He averred the debt was “written off” by the bank after the foreclosure and sale of the property.

Considering the evidence as a whole, Applicant’s past financial problems do not cast doubt on his current reliability, trustworthiness, or good judgment. I find there are clear indications that his financial problem is being resolved and is under control.

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.

Applicant’s finances were adversely affected by a circumstance beyond his control, i.e., his 2010 divorce. There is no evidence showing that he acquired any additional delinquent debt after 2010. His 2014 credit report shows no additional financial issues of concern. Of 34 trades reflected in his credit report, there is only one issue – the alleged foreclosed mortgage. Applicant’s clean credit report shows he has established a “meaningful track record” of debt payment, and I am confident he will maintain his financial responsibility. Financial considerations security concerns are 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

Subparagraph 1.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

JUAN J. RIVERA
Administrative Judge