



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



In the matter of:)
)
) ISCR Case No. 15-02116
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

09/28/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond his control contributed to his financial problems and that he was financially responsible under the circumstances. He disclosed his financial problems in his 2013 security clearance application (SCA). With his two jobs and his wife's income, their combined income is sufficient to pay for his family's living expenses and current debts. His financial problems are being resolved. Clearance granted.

Statement of the Case

Applicant submitted an SCA on May 1, 2013. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on March 24, 2016, issued him a Statement of Reasons (SOR) (amended February 3, 2017), alleging security concerns under Guideline F (financial considerations). Applicant answered the original SOR on April 5, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on February 3, 2017. DOHA issued a notice of hearing on February 3, 2016, setting the hearing for March 3, 2017. At the hearing, the

Government offered five exhibits (GE 1 through 5). Applicant testified and submitted 13 exhibits (AE 1 through 13). I received AE 13 post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 9, 2017.

Procedural Issue

On February 3, 2017, the Government moved to amend the SOR by adding SOR ¶ 1.k, alleging Applicant owed a \$6,539 charged-off debt to a university. (Hearing Exhibit (HE) 1). Applicant did not object to the amendment, and I granted it as requested. Applicant waived his right to 15 days of advanced notice for the new allegation. He indicated he was prepared and ready to proceed. He admitted SOR ¶ 1.k. (Tr. 15-18)

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.k. He denied the allegations in SOR ¶¶ 1.a, 1.d, and 1.g through 1.j. His admissions to the SOR and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 35-year-old employee of a federal contractor. He married his first wife in 2001 and divorced in 2006. He has two children of this marriage, ages 17 and 15. He remarried in 2008. He has a son, age seven, and a stepdaughter, age 13, from this relationship. Applicant completed his bachelor's degree in 2015, and continued with his master's degree studies. As of his hearing, he was two classes short of his master's degree.

Applicant served in the U.S. Marine Corps between January 2001 and August 2011. He was honorably discharged with the rank of sergeant (E-5) and assigned to the Inactive Ready Reserve. While in the Marine Corps, Applicant possessed a secret clearance. There is no evidence that his clearance was ever suspended or that there were any issues of concern, although, Applicant received non-judicial punishment in 2010. Apparently, the allegation concerned misconduct as a recruiter. (GE 1, SCA Section 13) I note that in his closing statement, Applicant alluded to "dealing with post-traumatic stress disorder (PTSD) and other issues that were being taken care of very well through the VA." (Tr. 65) Applicant implied that the Department of Veterans Affairs (VA) gave him a 10 percent disability rating due to PTSD, but he also indicated that he was being reevaluated and undergoing additional medical tests.

After his discharge, Applicant was unemployed between September 2011 and December 2011. He worked part time for a federal agency between January 2012 and October 2012. He was unemployed from November 2012 to April 2013. During these periods, Applicant attended college, pursuing his bachelor's degree.

In April 2013, Applicant's prior employer, a federal contractor, hired him as an operational specialist. Applicant testified that his employer promised to pay for his college tuition, but when the contract ended in 2015, the employer reneged on his promise. In April 2015, Applicant's current employer, a federal contractor, hired him as an acquisitions technical analyst. His current salary is \$60,000 a year. His wife works, and her salary is \$70,000 a year. As of his hearing, he had \$200 in his checking account, about \$500 in his savings account, and \$2,000 in his 401k retirement plan. Applicant started a second job in December 2016 to increase his income and expedite the resolution of his delinquent accounts.

Applicant explained that some of his delinquent debts resulted from his first marriage and divorce. At the time, he was overseas and unable to appear in court and ended up with the financial responsibility for the marital debts. Additionally, after his 2011 discharge, Applicant was unemployed for four months, underemployed during 10 months, and unemployed again for six months. These periods limited his earnings and he was unable to start addressing his debts until he found a full-time job in 2013.

SOR ¶ 1.a alleges a delinquent debt for a vehicle allocated by the divorce court to Applicant's ex-wife. (AE 2)

SOR ¶ 1.b alleges a child support obligation in arrears. Applicant explained that after his discharge, he did not have sufficient earnings to pay for the child support and his living expenses. He attempted to have the child support obligation modified, but was unsuccessful and fell behind on his child support obligation. He was not making that much money working part time while going through college. As of his hearing, Applicant was current on his child support arrearages. (GE 2, Tr. 42)

SOR ¶ 1.c alleges a credit card debt that Applicant accrued during his first marriage. The creditor made him a settlement offer (a lump-sum payment of \$324 to settle a \$1,619 debt), which Applicant declined. He believed it was better for his credit to pay his debts in full, so he elected to establish a payment plan of \$100 a month, starting in March 2017. (Tr. 32, 50)

SOR ¶¶ 1.d and 1.e allege Applicant's delinquent debts to a phone company. He understood from the phone services provider that he could change or upgrade his plan without penalties, charges, or fees because the change would be under a promotional offer. The phone company is now charging him for contract cancellation fees. Applicant stated he has been disputing the charges during the last two years without results. He provided no documentary evidence of his dispute or of his contacts with the phone company, the collection agency, or the credit bureau.

SOR ¶ 1.f alleges a delinquent debt for a vehicle loan that Applicant cosigned for a girlfriend in 2005. Applicant claimed he contacted his friend around 2011, and she claimed she was paying the debt. The creditor initiated a collection against Applicant as the cosigner of the note. Applicant stated he will have to take his friend to court to recover his money.

SOR ¶¶ 1.g and 1.h allege delinquent credit card accounts from 2006 that Applicant denies. He averred these were not his credit card accounts. He disputed the accounts with the creditors and the credit bureaus. He asked the credit bureaus to remove these accounts from his record. Applicant's February 2017 credit report shows the debts were removed. (GE 2)

SOR ¶ 1.i alleges a delinquent debt with a phone services provider. Applicant testified he returned the phone and closed the account within the first five days of the contract. He disputed the debt with the creditor, the collector, and the credit bureau. Applicant's February 2017 credit report shows the debt was removed. (GE 2).

SOR ¶ 1.j Applicant claimed he resolved this debt a long time ago. He disputed the debt with the creditor, the collector, and the credit bureau. Applicant's February 2017 credit report shows the debt was removed. (GE 2; Tr. 31, 59)

SOR ¶ 1.k alleges Applicant's tuition debt to a university, which he acknowledged. He claimed his prior employer promised to pay for his tuition and failed to do so. He hired an attorney to pursue legal options against the prior employer. He averred he would not have taken the college courses otherwise. Notwithstanding, he set up a payment plan with the university to demonstrate his good faith until the dispute is resolved. He agreed to pay \$544 monthly starting in March 2017. (Tr. 32, 45)

Applicant testified he has learned his lesson the hard way. Leaving the military was a huge transition for him and it took him some time to get accustomed to his new life. He did not pay his delinquent accounts after leaving the service because he did not have the money. He was doing the best he could based on his reduced earnings and living expenses. He highlighted his military service and noted he served 11 years while holding a clearance without any issues or concerns (except for his non-judicial punishment). Applicant believes his service speaks well about his loyalty, dedication, and integrity.

Applicant stated that his first priority was his children – to establish his visitation rights, and to pay his child support and arrearages. He had to retain an attorney to resolve his visitation rights. The legal fees prevented him from paying other debts. He explained that his financial situation continued to be tight until he found a second job. Now the income from the two jobs has allowed him the financial means to support his family, bring current his child support, and address some of his delinquent debts. Applicant promised to continue paying his legal debts and to resolve his financial problems.

Policies

The SOR was issued 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.

While the case was pending a decision, the Security Executive Agent implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective 8 June 2017, which replaced the 2006 AG. I decided this case under the AGs implemented by SEAD 4.

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, § 2. 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 SEAD 4, App. A ¶¶ 2(d) and 2(f). 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; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Applicant's history of financial problems is documented in the record. The SOR alleges 11 delinquent accounts totaling about \$31,000, some of which have been delinquent since 2006. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record established both disqualifying conditions, 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;¹ 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).

All of the above financial considerations mitigating conditions are raised by the facts in this case and mitigate the security concerns. Applicant's financial problems are ongoing and recent. However, his financial problems could be attributed to, or were aggravated by, circumstances beyond his control - his 2006 divorce, his 2011 discharge from the service, and his periods of unemployment and underemployment between 2011 and 2013. Considering the evidence as a whole, it shows that his financial problems occurred under circumstances unlikely to recur.

¹ 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 addressed his child support obligation in arrears before he started to address any other delinquent accounts. He noted that his priority was his children. As of his hearing, the account was current. Applicant credibly explained he did not have the financial means to pay his child support obligation, support his family, and address his other delinquent accounts until after he obtained a second job. He sought a second job to increase his income and pay his delinquent obligations faster. After bringing his child support obligation current, Applicant contacted the creditors in SOR ¶¶ 1.c and 1.k and established payment agreements. I note the payment agreements are recent, but they are evidence of Applicant's responsible efforts to resolve his financial situation.

Applicant disputed the accounts alleged in SOR ¶¶ 1.g through 1.i with the creditors and the credit bureaus, and asked for their removal from his credit report. His February 2017 credit report shows the debts were removed. Applicant also hired an attorney to help him dispute an account that the divorce court awarded to his ex-wife; to legally challenge a prior employer's refusal to comply with its promise to pay Applicant's tuition fees; and to dispute and settle other accounts. I find Applicant has received and is receiving financial counseling, and that there are clear indications that his financial problem is being resolved or under control.

Applicant's evidence is sufficient to establish that circumstances beyond his control prevented him from paying the debts and that he was financially responsible under the circumstances. He disclosed his financial problems in his 2013 SCA. His current financial situation is improving. With his two jobs and his wife's income, their combined income is sufficient to pay for his family's living expenses and current 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. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 35-year-old employee of a federal contractor. He received an honorable discharge from the Marine Corps after 11 years of honorable service. His 2006 divorce, 2011 discharge, and later periods of unemployment and underemployment contributed to or aggravated his financial problems. He presented sufficient information to establish that he was financially responsible under the circumstances and that his financial problems are being resolved or are under control. The 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

Subparagraphs 1.a - 1.k:

For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge