



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



In the matter of:

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ISCR Case No. 15-03861

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

01/13/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems were caused by circumstances beyond his control and he acted responsibly under the circumstances. He paid one debt, is making payments on two other debts, and claimed the last three debts were paid. He established a track record of debt payment and resolution. He understands that he is required to demonstrate financial responsibility to be eligible for a clearance and ultimately his job. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on May 14, 2013. 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 March 18, 2016, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on April 21, 2016 (Answer), and requested a decision based on the written record.

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*

A copy of the Government's file of relevant material (FORM) was provided to Applicant by transmittal letter dated June 2, 2016. Applicant received the FORM on June 7, 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 21, 2016.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a. and 1.b, and provided some evidence in extenuation and mitigation. He denied the remaining four SOR allegations. His 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 federal contractor. He graduated from high school and enlisted in the U.S. Navy. He served 20 years on active duty and was honorably retired with the rank of chief petty officer in 2010. Applicant took college courses online between 2004 and 2008, but did not earn a degree.

Applicant married his first wife in 1991 and divorced in 2002. He has two sons, ages 24 and 19, of this marriage. During his June 2013 interview with a government investigator, Applicant stated he was paying \$600 a month in child support. Applicant married his second wife in 2005 and divorced in December 2012.

After his retirement from the Navy, Applicant was unemployed from September 2010 to March 2013. While in the Navy, Applicant possessed a top secret security clearance (with access to sensitive compartmented information (SCI)). He has been working for his employer, a federal contractor, since March 2013. There is no evidence of any security violations or issues of concern, except for the SOR allegations.

Section 26 (Financial Record) of the 2013 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 and the property was sold in a short sale. The subsequent background investigation revealed the six debts alleged in the SOR, totaling over \$32,000. Applicant's credit reports, statement to a government investigator, and his SOR admissions established the debts in the SOR. The status of his SOR debts is as follows:

SOR ¶ 1.a (\$22,954). This is Applicant's delinquent credit card account. He established a monthly \$500 payment plan around December 2015. (FORM, Item 3) He claimed that as of April 2016 (SOR Response) he had reduced his debt by \$2,000.

SOR ¶ 1.b (\$3,546). Applicant admitted this is a collection for one of his loans. He established a monthly \$506 payment plan around December 2015. (FORM, Item 3) He claimed that as of April 2016 (SOR Response), he had reduced his debt by \$2,533.

SOR ¶ 1.c (\$1,732). This was Applicant's delinquent consumer credit card account. He presented documentary evidence showing the account was paid in January 2016. (SOR Answer)

SOR ¶ 1.d (\$803). This was a 2012 utility services debt that Applicant believed should have been resolved with the short sale of his property. He claimed he initially disputed the debt, but ended up paying it. The March 2015 credit report (FORM, Item 5) shows the debt was in collection, but there is no amount past due.

SOR ¶¶ 1.e (\$571) and 1.f (\$181). These were collections for unpaid medical services Applicant received. Applicant explained the provider attempted to collect from the wrong insurance company and the claims were denied. When he was notified, Applicant contacted the hospital and provided the correct information. Apparently, his insurance company paid these debts. The March 2015 credit report (FORM, Item 5) shows the debts were in collection, but there is no amount past due.

Applicant's financial problems were the result of his 2012 divorce and period of unemployment. He claimed the divorce forced him to do a short sale of one real estate property, and that the court awarded his ex-wife the family home (second real estate property). The court made Applicant responsible for all the marital debts in exchange of his ex-wife foregoing any claims against his military retirement pay. He also claimed that his lawyer advised him to file for bankruptcy protection, and he refused because it was his responsibility to pay his debts.

While unemployed, Applicant lived off his military retirement pay (\$1,139), his savings, and some odd jobs. As soon as he became employed in 2013, he started to pay his debts. Applicant stated he has acquired no additional debts since his 2012 divorce. 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 while holding a clearance, 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 history of financial problems is documented in his credit reports, SOR response, and prior statements. 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 2012. His financial problems were caused by circumstances beyond his control - his 2012 divorce and a three-year period of unemployment after retirement. Applicant's documentary evidence established that he resolved three of the six delinquent accounts alleged in the SOR. Applicant claimed he paid the debt alleged in SOR ¶ 1.d, and his insurance paid the debts alleged in SOR ¶¶ 1.e and 1.f. He did not submit documentary evidence to support his claims, but considering the evidence as a whole, I find it is likely he did pay these accounts. Applicant believes that he has been making progress resolving his delinquent debts and promised to continue paying his debts in the future.

Based on Applicant's actions addressing and paying his debts, his prior service while possessing a clearance without any issues of concern, and his promise to pay his debts, future delinquent debt is unlikely to recur. Considering the evidence as a whole, his 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. His payments of some of his debts and establishing payment plans for other debts showed good faith. His efforts are sufficient to fully mitigate financial considerations security concerns.

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 is a 45-year-old employee of a federal contractor. He served 20 years on active duty in the Navy and was honorably retired in 2010. After his retirement, he was unemployed from September 2010 to March 2013. While in the Navy, Applicant possessed a top secret clearance with access to SCI. There is no evidence of any security violations or issues of concern, except for the SOR allegations.

Applicant showed financial responsibility by contacting his creditors and making payment arrangements to resolve his delinquent debts. Applicant's finances were adversely affected by circumstances beyond his control, i.e., his divorce and a three-year period of unemployment. There is no evidence showing that he acquired any additional financial obligations since 2012. He understands that he is required to demonstrate financial responsibility to retain his security clearance and ultimately his job.

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 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

Subparagraphs 1.a - 1.f: 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