



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



In the matter of:

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ISCR Case No. 15-04164

Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

05/19/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant should have been more responsible in addressing his financial problems. Notwithstanding, he recently resolved or paid all the alleged delinquent accounts. He is in control of his financial situation, and he has no new delinquent debt. Financial considerations security concerns are mitigated. Access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 8, 2013. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on January 14, 2016, issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on April 8, 2016 (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.

DOHA assigned the case to me on June 29, 2016, and issued a notice of hearing on December 22, 2016, scheduling the hearing for January 23, 2017. The hearing was held as scheduled. I admitted Government exhibits (GE) 1 through 4, and Applicant's exhibit (AE) 1 (comprised of Tabs A through CC) into evidence without objection. I received AE 1, Tabs BB and CC post-hearing. Applicant testified and presented the testimony of one witness. On January 31, 2017, DOHA received the transcript of the hearing. The record closed on February 8, 2017, after receipt of Applicant's last submission.

Findings of Fact

In Applicant's Answer, he specifically denied the SOR allegations. Notwithstanding, he generally admitted most of the underlying facts of the SOR allegations and provided extenuating and mitigating information. Applicant's statements in his Answer and his hearing admissions are incorporated into my findings of fact. After a thorough review of the record evidence, I make following additional findings of fact:

Applicant is 40 years old. He graduated from high school in 1996, and received a bachelor's degree in 2000. He has never married and has no children.

Applicant worked as a systems engineer for a private company between May 2000 and September 2003; he was then unemployed for close to one year and employed with two private companies between September 2004 and February 2007. He has been working for federal contractors since February 2007. His current employer (a federal contractor) hired him as a senior web developer in July 2013. Applicant has held a DOD secret clearance since 2008. There are no allegations or evidence of any security violations or other issues of concern, except for those in the SOR.

Applicant's supervisor has had daily contact with him since 2013. She described him as a "front line forward deployed software engineer" and "one of the best software engineers" working for a large federal contractor. He has held a secret-level clearance since he was hired, and his employer recently requested the upgrade of his clearance. Applicant has established a reputation for doing a good job maintaining and securing classified information. Applicant disclosed his financial problems to his supervisor. He has kept her informed of his efforts to resolve his financial problems, and disclosed his receipt of the SOR.

Applicant submitted his most recent SCA in 2013. In response to Section 26 (Financial Record) of the SCA, Applicant disclosed that he had financial problems, which included a state tax lien filed against him in 2008 (paid in 2013) and eight delinquent credit card accounts, totaling around \$55,000. In 2008, Applicant experienced a financial hardship that lasted for about eight months due to bad financial decisions, including lending money to family members. He claimed that by the time he had recovered financially, the debts were charged off and sold to debt collectors.

Applicant's creditors were unwilling to work with him to set payment arrangements because they wanted payments in full. He claimed he was in the process of contacting

the collection agencies to settle the debts and establish payment arrangements. In his 2013 SCA, Applicant disclosed that he travelled for tourism to China in 2010 for about five days, and to Guatemala in 2013 for about 10 days.

Applicant was interviewed by a government investigator in November 2013, and questioned about his delinquent accounts. He told the investigator that he would resolve some of his delinquent debts. However, Applicant took no action to resolve any of his debts until after he received the SOR. He testified that he was not sure how to deal with the situation and wanted to see what would happen. When he received the SOR, he realized the seriousness of the concerns raised by his delinquent debts.

Applicant's security investigation addressed his financial problems and revealed a state lien filed against Applicant, and the eight delinquent accounts alleged in the SOR. Applicant's history of financial problems is well documented in the record evidence and his testimony. The status of the SOR debts follows:

SOR ¶ 1.a (\$1,858) alleged a state lien filed against Applicant in 2008. Applicant explained that the state reviewed his 2002 income tax return in 2007 and filed the lien in 2007. He lived abroad between 2007 and 2013, and was unaware of the lien until 2013. In November 2013, Applicant paid the lien. (Answer, Exhibits B and C; AE 1, Tabs B and C)

SOR ¶ 1.b (\$8,349) alleged Applicant's delinquent credit card account. He used the credit card to pay for his living expenses while unemployed. In March 2016, he contacted the creditor, settled the debt for \$2,505, and paid it. (Answer, Exhibit A; AE 1, Tabs A and S)

SOR ¶ 1.c (\$8,097) alleged Applicant's delinquent credit card account. The creditor provided Applicant with a cancellation of debt (Form 1099C) for \$6,494, in 2012. Applicant testified he filed it with his 2012 income tax return.

SOR ¶ 1.d (\$643) alleged a delinquent debt to a bank. In March 2016, Applicant contacted the creditor, settled the debt for \$377, and paid it. (AE 1, Tabs E and T)

SOR ¶ 1.e (\$1,709) alleged Applicant's delinquent credit card account. In March 2016, he contacted the creditor, settled the debt for \$1,085, and paid it. (Answer, Exhibit F; AE 1, Tabs F and U)

SOR ¶ 1.f (\$22,414) alleged Applicant's delinquent credit card account. In March 2016, he contacted the creditor and arranged to make payments of \$400 a month for the delinquent credit cards alleged in SOR ¶¶ 1.f, 1.g, and 1.h.

In January 2017, Applicant settled the account alleged in SOR ¶ 1.f for \$15,103 and paid it. He withdrew the money from his 401k retirement account to pay the debt. (Answer, Exhibit G; AE 1, Tabs G, V, and BB)

SOR ¶ 1.g (\$14,709) alleged Applicant's delinquent credit card account. In January 2017, Applicant settled the account alleged in SOR ¶ 1.g for \$10,431 and paid it. (AE 1, Tab W)

SOR ¶ 1.h (\$4,701) alleged Applicant's delinquent credit card account. In March 2016, Applicant settled the account for \$2,350 and paid it. (AE 1, Tab H) Applicant explained he was planning on paying SOR ¶¶ 1.f, 1.g, and 1.h through the \$400-a-month payment, but it would take too long to pay them, and the lump sum payment agreement was more advantageous.

SOR ¶ 1.i alleged Applicant owed an undetermined amount to a bank and that the account was charged off. Applicant's documentation shows the account was paid in full prior to June 2016. (AE 1, Tab X)

Applicant explained that between 2007 and 2013, he worked for a U.S. company in a foreign country. He was unemployed during the first six months of 2007, and had to live from his savings and credit cards. In 2007, he issued powers of attorney to his parents (living in the United States) and empowered them to use his credit cards to pay for their living expenses. Unbeknown to him, his parents overcharged his credit cards. He did not know the extent of his debts until he requested a credit report in 2013.

In about 2007, Applicant loaned \$4,000 to \$5,000 a month to an uncle for about eight months. He believed his uncle would pay him back, but he never did. In 2009, Applicant's contract lapsed and the new contractor reduced his salary about \$20,000. Between 2009 and 2013, he earned about \$100,000 a year.

Applicant is currently managing his own financial situation, and he is financially stable. During 2016, he participated in six financial counseling classes. He averred that as of his hearing date, he was current on all his financial obligations. Applicant's yearly income is \$114,000, about \$9,500 a month. He pays about \$4,600 in monthly expenses and provides financial support for his mother, who lives with him, and his grandmother. His income meets his demands and needs on a monthly basis. His most recent credit score is 748.

Applicant believes he is not a security risk. He highlighted that he has held a clearance since 2008, and there is no evidence of any security issues or concerns, except for the SOR allegations. Applicant testified that if he had known about the security concerns raised by his delinquent debts he would have made more effort to resolve them sooner.

Applicant's 2015 credit report (GE 3) shows he had only two delinquent accounts (alleged in the SOR). All of the SOR accounts are currently paid. His financial information and credit reports show that he is not living beyond his financial means. Applicant expressed remorse for his financial problems. He believes that his financial situation is now stable and he is motivated to continue resolving his financial problems. He promised to maintain his financial responsibility. Applicant understands that he is required to maintain his financial responsibility to be eligible for a 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

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 well documented in 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.

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)).

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).

Applicant acknowledged his financial problems. He believes they resulted from circumstances beyond his control, including his period of unemployment, his inability to find a paying job commensurate with a prior salary, and periods of underemployment.

Applicant's documentary evidence show that he paid one debt in 2013, but resolved most of his SOR debts after receipt of the SOR. He currently has no delinquent debts outstanding. He is in control of his own finances. The credit reports show that he has not acquired any new delinquent debt. His financial information and credit report show that he is not living beyond his financial means.

Applicant expressed remorse for his past financial problems. His financial situation is now stable and he is motivated to continue resolving his financial problems. He is keeping his own budget and managing his expenses. Applicant believes he has learned his lesson and promised to maintain his financial responsibility. Considering the evidence as a whole, Applicant's past financial problems do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant's efforts are sufficient to mitigate the financial considerations security concerns. AG ¶¶ 20(a), 19(c), and 19(d) apply.

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 Guidelines F and E in my whole-person analysis, but some warrant additional comment.

Applicant, 40, has been working for federal contractors since 2007, and has possessed a security clearance since 2008. There is no evidence of any security violations or concerns, except for the SOR allegations. Applicant claimed some of his financial problems were due to circumstances beyond his control (a period of unemployment, providing financial assistance to his parents and an uncle). However, his evidence shows he was not diligent in addressing his financial problem.

Applicant was not fully aware of the security concerns raised by his financial problems. He now understands that he is required to demonstrate financial responsibility to be eligible for a clearance. His evidence is sufficient to establish his current financial responsibility. He paid or resolved all the SOR allegations and he is in control of his financial situation. 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.i:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge