



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



In the matter of:)
)
) ISCR Case No. 15-04465
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/03/2017

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to show that he has a track record of financial responsibility, and that his financial problems are under control. He failed to mitigate the Guideline F (financial considerations) security concerns. Clearance is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on April 21, 2014. On January 7, 2016, 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 18, 2016, 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 29, 2016. Applicant received the FORM on April 5, 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, and submitted no additional evidence. The case was assigned to me on February 24, 2017.

¹ DOD acted under Executive Order 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.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government investigator from December 11, 2014. Applicant was informed he could object to the summary of his interview, and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver, and I would consider the evidence. Applicant did not respond to the FORM, submitted no additional evidence, and raised no objections. I admitted the document and considered it.

Findings of Fact

In Applicant's response, he admitted the factual allegations in SOR ¶¶ 1.a through 1.c, 1.e through 1.h, and 1.j (same creditor as SOR ¶ 1.a). He denied SOR ¶ 1.d, claiming he paid off the debt, and 1.i, alleging he did not recognize the creditor.

After a thorough review of the record evidence, including Applicant's 2014 SCA and his answer to the SOR, I make the following findings of fact:

Applicant is 35 years old, and he is a self-employed truck driver working with a federal contractor. He graduated from high school in 2001. He has never been married, but has two children, ages 12 and 10, for whom he has custodial rights. The children's mother is required to provide financial support, but Applicant stated she never does.

Applicant's work history shows he was employed with a private company from 2003 to 2012. He then worked several jobs with different employers until October 2013 when he was terminated from his job as a truck driver. Applicant was unemployed until April 2014, when he started working as an independent contractor for his current employer. While unemployed, Applicant received financial support from his cohabitant and his parents, and sold some of his collectibles to meet his living expenses. (FORM, Item 5)

In response to Section 26 (Financial Record) of Applicant's 2014 SCA, Applicant disclosed that he had financial problems and revealed a few of his delinquent debts. In his 2014 SCA, Applicant attributed his financial problems to his period of unemployment. He indicated he had found a new job and with his anticipated earnings, he promised to contact his creditors and pay his delinquent debts. He claimed that he had been in contact with some of his creditors.

During his December 2014 interview, Applicant explained he was not terminated from his job due to misconduct. His understanding is that his productivity was low because of his mileage expenses. He lived far away from the customer base and the employer did not want to pay his mileage expenses. (SCA, Section 13 A; FORM, Item 5) The investigator also confronted Applicant with several delinquent debts he failed to disclose in his SCA. Applicant admitted most of the debts; explained he did not remember them;

and claimed that he had been in contact with some of his creditors and told them he would pay his debts when he found a full-time job.

Applicant's background investigation uncovered the ten delinquent debts alleged in the SOR, which are established by the record credit reports, his December 2014 statement, and his answer to the SOR. SOR ¶¶ 1.a and 1.j alleged the same debt. Applicant explained that he cosigned an auto loan along with the mother of his children. She did not pay the loan, and the car was repossessed. The unpaid collection is the remaining balance for the loan. In December 2014, Applicant promised to resolve the debt through a lump sum settlement or a payment arrangement.

SOR ¶¶ 1.b, 1.c, and 1.e through 1.h alleged debts for medical services that were placed for collection. Applicant explained that all these debts arose out of an emergency operation he underwent without medical insurance in 2013. Applicant claimed he paid the debt alleged in SOR ¶ 1.d, and that he did not recognize the debt alleged in SOR ¶ 1.i.

Applicant presented no documentary evidence to show that he has been in contact with his creditors, or that he attempted to settle, pay, or dispute any of his delinquent debts. He promised during his December 2014 to resolve some of his debts. He failed to submit documentary evidence of his efforts to pay or resolve his delinquent debts.

In his answer to the SOR, Applicant professed to be living within his financial means. He claimed to be working to restore his credit and claimed to have paid at least four other debts not alleged in the SOR. He presented no documentary evidence of such payments. Applicant presented no evidence to show he has attended a financial counseling course or that he maintains a budget.

During his 2014 interview, Applicant told the investigator he was living with a cohabitant and that they shared their living expenses. His average monthly income is about \$2,300, and his cohabitant's is about \$1,600. Their monthly obligations total \$2,815. Applicant stated that his financial situation is now stable because of his new job, and his income is sufficient to pay his living expenses and debts. He promised to contact his creditors and to settle or make payment arrangements on all his debts. He outlined the order he intended to address his delinquent debts.

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, his 2014 interview, and his 2016 SOR response. The evidence establishes the delinquent accounts alleged in the SOR. 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.

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).

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems are recent and ongoing. He presented insufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances unlikely to recur. He claimed his debts resulted from his seven-month period of unemployment (October 2013 – April 2014), and his September 2013 operation.

However, Applicant presented insufficient information to establish circumstances beyond his control and that he was financially responsible under the circumstances.

Applicant presented no evidence of efforts taken to remain in contact with his creditors, or of efforts he has taken to pay or resolve his delinquent debts even after his December 2014 interview with a government investigator.

Applicant was made aware of the Government's financial considerations security concerns when he completed his 2014 SCA, during his December 2014 interview, when he received the SOR, and when he was provided the FORM. He was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. He failed to provide any documentary evidence to show he has been in contact with his creditors, or that he attempted to settle or pay his delinquent debts since he acquired them.

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 did not submit sufficient evidence to show his financial responsibility. Applicant submitted no documentary evidence of payments to the SOR creditors or of efforts to resolve his debts. There is insufficient evidence of progress addressing his financial problems. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problems are being resolved, or are under control. 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. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. The financial considerations security 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.h:	Against Applicant
Subparagraphs 1.i and 1.j:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge