



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



In the matter of:)	
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HULL, Forrest Lee)	ISCR Case No. 15-04628
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*
02/16/2017

Decision

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 his most recent security clearance application (SCA) on April 13, 2014. On January 17, 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 February 26, 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 April 5, 2016. Applicant received the FORM on April 14, 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 responded to the FORM via a one-page statement, dated May 12, 2016 (included in the case file). In an email dated May 12, 2016, Department Counsel asked Applicant whether he intended to

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.

submit any additional evidence. No additional response was received. The case was assigned to me on February 13, 2017.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from June 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 the evidence would be considered by me. Applicant responded to the FORM, submitted one document, but raised no objections. I admitted the document and considered it.

Findings of Fact

In Applicant's response, he did not admit any of the SOR allegations. Regarding SOR ¶ 1.a, he claimed he had contacted the creditor's legal representative to make payment arrangements or to pay off the debt. He promised to submit documentation of his contact, but failed to do so. He also claimed he had paid the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.j, and promised to provide documentary evidence of the payments. He failed to do so. Applicant stated he was disputing the debts alleged in SOR ¶¶ 1.d through 1.i. The credit reports in evidence show he disputed some of his debts.

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

Applicant is 46 years old, and he is employed with a federal contractor. He graduated from high school in 1988, and completed some college courses, but did not earn a degree. He has been married and divorce twice. His last divorce took place in 2010. He has a 20-year-old son. Applicant served on active duty in the U.S. Navy from 1993 through 1997. He enlisted in the active reserve in 1999, where he served until 2003. He received an honorable discharge on both occasions.

Applicant's work history shows he was employed with a private company from 1997 to 1999; served in the active reserve from 1999 to 2003; and worked for federal contractors between 2003 and 2011. He was unemployed from November 2011 to March 2012; employed from March 2012 to November 2013; and unemployed from November 2013 to April 2014, when he submitted his 2014 SCA. As of his June 2014 interview, he had been employed part time since April 2014. In his answer to the SOR, Applicant stated that he was fully employed and promised to continue resolving his financial problems. He was granted security clearances in 2000 and 2013.

In response to Section 26 (Financial Record) of Applicant's 2014 SCA, Applicant disclosed that he had financial problems and revealed some of his delinquent debts. In

his 2014 SCA, Applicant attributed his delinquent debts to his periods of unemployment. He claimed that he had been in contact with his creditors, and reassured them that he would pay his debts when he started working full time.

During his June 2014 interview, the government investigator confronted Applicant with the fact that he was fired from his job in 2011, and he failed to disclose it in his 2014 SCA. Applicant explained he was never told he was fired from his job. The investigator also confronted Applicant with numerous delinquent debts he failed to disclose in his SCA. Applicant admitted 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 June 2014 statement, his answer to the SOR, and his response to the FORM.

In his answer to the SOR, Applicant professed his honesty, and stated he believed he was making an appropriate level of effort to resolve his debts since he became fully employed. He explained he became delinquent on his debts when he was unemployed. He claimed he went through a very difficult time and had to disregard his debts to provide for his and his son's living expenses. He highlighted his Navy service and his loyalty to the United States. He promised to continue paying his debts now that he was fully employed. Applicant averred he had recently attended a financial counseling course that help him to maintain his budget.

Credit reports show Applicant disputed some debts, but he provided no evidence of the status of those disputes. The 2016 credit report show a judgment against Applicant, four delinquent accounts, and three accounts paid and closed.

Applicant presented no documentary evidence to show that he has been in contact with his creditors, or that he attempted to settle or pay his delinquent debts. He promised during his June 2014 interview to document his contacts with his creditors and show evidence of his payment of some debts. Additionally, in his February 2016 answer to the SOR, he also promised to submit documentary evidence of his payments and contacts with creditors. He failed to do so.

Applicant provided no information about his current financial position. He did not provide any information about his current income, monthly expenses, and whether his income is sufficient to pay his living expenses and 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).

Applicant receives credit for paying some debts and disputing others. Notwithstanding, none of the financial considerations mitigating conditions fully apply. Applicant's financial problems are recent and ongoing. He presented no 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 unemployment. However, Applicant presented insufficient information to establish circumstances beyond his control and that he was financially responsible under the circumstances. The record evidence shows Applicant was fired from his job. As such, I cannot consider his unemployment as a circumstance beyond his control.

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 assuming, for argument sake, that he was not fired from his job, Applicant's evidence is insufficient to establish that he was financially responsible under the circumstances.

Applicant was in the service and worked for federal contractor during many years holding a security clearance. He knew about, and was further made aware of the Government's financial considerations security concerns when he completed his 2014 SCA, 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. Applicant also failed to establish that he has sufficient income to keep his debts in current status and to pay his delinquent 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. 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.

I considered Applicant's service and his work for federal contractor while holding a security clearance. Notwithstanding, 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, except for some debts he disputed. 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
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Subparagraphs 1.a - 1.j:	Against Applicant
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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