



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



In the matter of:

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ISCR Case No. 15-04719

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's periods of unemployment could have contributed to or aggravated his financial situation; however, he presented insufficient information to establish that he was financially responsible under the circumstances. Financial considerations concerns are not mitigated. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 4, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on December 7, 2015, issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on December 30, 2015, and requested a decision based on the written record.

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.

A copy of the Government's file of relevant material (FORM), adducing the evidence in support of the security concerns and clearance denial, was provided to Applicant by transmittal letter dated March 2, 2016. Applicant received the FORM on March 11, 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 May 1, 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 September 30, 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 failed to respond to the FORM, submitted no documents, and raised no objections. I admitted the document and considered it.

Findings of Fact

In Applicant's response, he admitted the SOR allegations. He also stated he would pay a \$57 debt alleged in the SOR within a short period. Applicant's SOR admissions are incorporated into my findings of fact.

Applicant is 55 years old. He never married and has no children. He received a bachelor's degree in 1986. He enlisted in the Air Force and served from 1988 to 1999. While in the Air Force, he was granted a secret clearance. Applicant did not disclose the reason for his discharge or the characterization of his service. He noted that he has been receiving mental health counseling and taking medication since 2010 for anxiety and depression related to his service period and the passing away of his parents. (SCA, Section 21; FORM, Item 4)

Applicant's employment history shows that he was employed between October 1999 and September 2004; unemployed between September 2004 and June 2005; employed between June 2005 and June 2009; unemployed between June 2009 and July 2011; employed between July 2011 and May 2012; unemployed between May 2012 and October 2013; and employed since October 2013 to present. He was hired by his current employer, a federal contractor, in May 2014. (2014 SCA, Section 13)

Applicant submitted his most recent SCA in 2014. In response to Section 26 (Financial Record) of the SCA, Applicant disclosed 14 delinquent student loans and other debts acquired between 2005 and 2010. Applicant stated that lapses in his work history made it difficult to meet his financial obligations. He also indicated he was unsure whom to contact to resolve his debts and that he was seeking forbearance for the student loans.

A Government background investigator interviewed Applicant in September 2014. During the interview, Applicant confirmed his periods of unemployment and told the investigator that while unemployed he took college courses (between 2005 and 2009, and between 2009 and 2010). Additionally, he searched for jobs and spent time with family and friends. Applicant disclosed on his 2014 SCA that he travelled for leisure overseas in 2008, 2009, and 2011. (SCA, Section 20C)

The investigator confronted Applicant about his delinquent debts, including those alleged in the SOR (seven delinquent student loans and two other debts). Applicant confirmed the alleged debts. He acknowledged receiving collection notices and calls from creditors, but he ignored them. Applicant promised to contact his creditors to establish payment agreements and to ask for forbearance on his student loans. (SCA, Section 26, FORM, Item 4)

Applicant informed the investigator that his financial condition was poor to fair. He explained that because of his periods of unemployment, he did not have sufficient money to pay his delinquent debts after paying his living expenses and his car note.

Applicant's history of delinquent debt is documented by his 2014 SCA, 2014 interview, SOR admissions, and in his credit report. 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 presented no evidence to show he has attended a financial counseling course or that he maintains a budget. Applicant provided no 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

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 the file record. 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.

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 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. Applicant presented evidence of periods of unemployment that could have contributed to or aggravated his financial situation;

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)).

however, he presented insufficient information to establish that he was financially responsible under the circumstances.

Applicant was made aware of the Government's financial considerations security concerns when he completed his 2014 SCA, during his 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.

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. The financial considerations security concerns are not mitigated.

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, but some warrant additional comment.

Applicant is 55 years old. He served in the Air Force 10 years, and has worked for federal contractors on and off since 2011. He presented evidence of periods of unemployment that could have contributed to, or aggravated his financial situation; however, he presented insufficient information to establish that he was financially responsible. Under the totality of the circumstances of this case, Applicant's evidence is insufficient to establish his financial responsibility. Financial considerations 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.i:	Against 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 grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge