



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05298

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

10/05/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant presented insufficient evidence to establish that he is financially responsible and that his financial problems are resolved or under control. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 12, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD), on November 23, 2016, issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on December 23, 2016, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence prompting the security concerns, was provided to Applicant by letter dated February 2, 2017. Applicant received the FORM on February 9, 2017. 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 with a short

statement, and submitted no documentary evidence. The case was assigned to me on October 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 August 2, 2012. (FORM, Item 6) Applicant was informed he could object to the summary of his interview, and it would not be admitted or considered by me, or that he could make corrections, additions, deletions, and update the document to make it accurate. He was told that his failure to respond to the FORM, or to raise any objections, could be construed as a waiver and the proposed FORM evidence would be considered by me. Applicant responded to the FORM and raised no objections. I admitted the FORM with its proffered evidence and considered it.

Department Counsel moved to amend the SOR by withdrawing SOR ¶ 1.h. I grant the motion as requested.

Findings of Fact

Applicant admitted nine of the SOR allegations, except for SOR ¶ 1.g, which he denied. His admissions to the SOR allegations and in his response to the FORM 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 38-year-old employee of a large federal contractor. He married his first spouse in 2003 and divorced in 2005. He married his second spouse in 2008, separated in 2011, and divorced in 2012. He has an 8-year-old son and a 19-year-old stepson.

Applicant's employment history indicates that he has been fully employed since 2001. His current employer, a federal contractor and security clearance sponsor, hired him in 2004. He has been working for his current employer as a flight-test engineer since 2007.

In his response to Section 26 (Financial Record) of his 2012 SCA, Applicant disclosed that he was having trouble filing his 2011 income tax return because of "issues related to his impending divorce" (his wife refused to provide him with previous year's tax documents). He claimed he had submitted multiple requests for extensions to file to the IRS, which were denied. He alleged he was seeking help from a professional tax consultant to resolve his problems. He presented no evidence of contacts with a tax professional.

Applicant disclosed that in 2007 he was late paying back his corporate credit card due to a "severe breakdown in the travel accounting process." He later paid the debt, which is not alleged in the SOR. Applicant noted in his 2012 SCA that he was

issued a temporary child support order in February 2012 that required him to make back payments to October 2011, which made him be in arrears. He was ordered to pay \$2,866 in child support. According to the court documents, in 2012, Applicant's annual adjusted gross income was \$133,000.

Applicant disclosed that he had a 2008 charged-off motorcycle loan. He explained that the motorcycle was damaged by a towing company called in by Applicant's landlord. Both the landlord and the towing company refused to pay for the damages to the motorcycle. Applicant failed to explain why he did not continue to pay his motorcycle note. (SOR ¶ 1.i) He also disclosed he had a home foreclosed in 2009. Applicant bought a home in 2005 using a three-year adjustable rate mortgage (ARM). The mortgage rate "skyrocketed" in 2007 and he was unable to pay the mortgage. He claimed he attempted several short sales of the property, but the creditor failed to cooperate in the process and foreclosed the mortgage. The mortgage is not alleged in the SOR.

A government background investigator interviewed Applicant in August 2012. During the interview, Applicant claimed he had met with a tax professional to resolve his tax problem. Applicant estimated owing \$5,000 to the IRS. He presented no evidence of his meeting with the tax professional.

In his answer to the SOR, Applicant claimed he was unable to satisfy his delinquent debts because of the extremely high monthly child support and spousal maintenance the court ordered him to pay (\$2,866). His ex-wife also was awarded Applicant's savings and retirement accounts. He pled his case to the family court with no results. Applicant claimed he was in the process of filing for bankruptcy protection. He presented no documentary evidence to support his claim that he was seeking bankruptcy protection.

Applicant claimed that he had been financially responsible – that he was "simply trying to survive within his financial means while still meeting his child support and spousal maintenance obligations." He averred that every debt listed in the SOR became delinquent because of his 2012 divorce.

Applicant noted in his answer to the FORM that he filed his 2011 income tax return. He did not indicate when he filed it, but presumably it was in 2016, because he claimed he paid \$7,700 in back taxes in April 2016. He anticipated that in April 2017, he would pay the remaining tax debt of \$4,600 with his 2016 tax return.

Applicant claimed to be making progress paying his delinquent debts. He averred the speed of his payments is slower than what he would like it to be, but because of the excessive child support and alimony payments, his current income was being used for rent, utilities, and food. He implied he does not have the money to pay his delinquent debts. Applicant noted that the bulk of his debt is from defaulted federal student loans. He claimed he was in the process of applying for a student loan rehabilitation program.

He explained he had a substantial salary increase this year, and anticipates he will be able to make the student loan rehabilitation payments.

Applicant presented little evidence about his current financial situation. It is not clear whether his income is sufficient to pay for his living expenses, debts, and his court-mandated obligations. Applicant's evidence is insufficient to establish whether his financial problems are resolved or under control. He submitted no documentary evidence of contacts with creditors, payment agreements established, or of any payments made to resolve his delinquent accounts.

Applicant blamed his divorce for his inability to pay his debts. Notwithstanding, I note Applicant had a foreclosed home in 2009, and a charged-off motorcycle loan from 2008, both before his 2012 divorce. He also presented no documentary evidence of his contacts with a bankruptcy attorney, tax attorney, or of his efforts to rehabilitate his student loans. Applicant noted that his current work assignment requires him to have a clearance, at least until August 2017. He indicated that he would relinquish his clearance then.

Policies

The SOR was issued 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. The case will be decided under Security Executive Agent Directive (SEAD) 4, National Security Adjudicative Guidelines (AG), effective 8 June 2017.

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 SEAD 4, App. A ¶¶ 2(d) and 2(f). 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; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 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 for 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Applicant's history of financial problems is documented in the written record. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;¹ 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

¹ 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)).

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 are fully raised by the facts in this case and they do not mitigate the security concerns. Applicant’s financial problems are ongoing and recent. His evidence is insufficient to show that his financial problems occurred under circumstances unlikely to recur.

Applicant has at least two SOR debts that were delinquent before his divorce – his student loans and the charged-off motorcycle. He provided little explanation concerning the reasons why they became delinquent, and he failed to provide a reasonable explanation to justify his failure to address or to pay those debts.

Applicant’s divorce likely contributed to or aggravated his financial situation. However, Applicant’s evidence is insufficient to establish that he was financially responsible. As previously stated, two of his delinquent accounts pre-date his divorce and he presented no evidence to show he acted responsibly with respect to them. Moreover, he presented little evidence of any good-faith effort to address his SOR debts before his divorce, after he submitted his 2012 SCA, or after he was questioned about his financial problems during his August 2012 interview.

Considering the period during which Applicant’s debts have been delinquent, the number and amount of the debts, the lack of evidence of payments made, or of any efforts to resolve his delinquent accounts, I cannot consider he has been financially responsible in his efforts to resolve his delinquent debts. Furthermore, the record is not clear about Applicant’s current financial situation, and whether his income is sufficient to pay for his living expenses, current debts, and court-mandated obligations.

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. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 38-year-old employee of a federal contractor. He presented insufficient information to establish that he is financially responsible and that his financial problems have been resolved or are under control. 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.f, 1.i, and 1.j:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge