



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



In the matter of:

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ISCR Case No. 15-05437

Applicant for Security Clearance

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/06/2017

Decision

RIVERA, Juan J., Administrative Judge:

After he was made aware of the security concerns raised by his financial problems, Applicant established a sufficient record of debt payments to mitigate the financial considerations concerns. He understands that he has to maintain his financial responsibility to be eligible for a clearance. He did not deliberately falsify his 2014 security clearance application (SCA). The financial considerations and personal conduct security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an SCA on December 5, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on March 12, 2016, issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).¹ Applicant answered the SOR on June 22, 2016, 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), submitting the evidence prompting the security concerns, was provided to Applicant by transmittal letter dated August 17, 2016. Applicant received the FORM on August 31, 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 timely responded to the FORM and submitted nine pages (marked and admitted as Applicant Exhibit (AE) 1) addressing some of the accounts alleged in the SOR. The case was assigned to me on May 23, 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 March 30, 2015. 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 by submitting documents showing contact with creditors and payments made. He raised no objections. I admitted the FORM and Applicant's evidence, and considered them.

Findings of Fact

In Applicant's response, he admitted all of the SOR allegations, except for SOR ¶ 1.h, which he denied. He also submitted comments in explanation and mitigation. He stated that he was making monthly payments on the accounts alleged in SOR ¶¶ 1.a, 1.e (same as 1.k), and 1.i. That he would call the creditor of the account alleged in SOR ¶ 1.b to set up a payment plan, and that he was currently saving money to settle the account alleged in SOR ¶ 1.c. He averred he paid the accounts alleged in SOR ¶¶ 1.d (same as 1.f), 1.g, and 1.j. Applicant admitted he did not list his delinquent accounts on his 2014 SCA (SOR ¶ 2.a), but then stated that "at the time of hire, knowledge of my debt situation was zero." I considered his response a denial to deliberately falsifying his 2014 SCA.

Applicant's SOR admissions are incorporated into my findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 33-year-old sheet metal worker employed with a federal contractor. He completed high school in 2000, and attended community college for some time, but did not earn a degree. He attended a technical school and earned a training certificate in 2003. He married his first wife in April 2006, and they have two children, ages 10 and 9.

Applicant's employment history shows that he was employed between January 2004 and November 2009. He was unemployed between December 2009 and January 2010; employed between February 2010 and March 2011; and unemployed between April 2011 and July 2011. He started working for federal contractors in August 2011. He has worked for his current employer and security sponsor since September 2014.

Applicant submitted his SCA in December 2014. In response to Section 26 (Financial Record) of the SCA, Applicant disclosed no delinquent accounts.

A government background investigator interviewed Applicant in March 2015. During the interview, Applicant volunteered that he had financial problems that included a number of delinquent debts. He explained that he was his family's main source of income, but his wife was in charge of managing the household finances. He stated that when he was younger he misused his credit because he did not have the knowledge to handle his finances. When the accounts became delinquent, he did not have the financial resources to pay them. Applicant also struggled to pay the family's living expenses and their debts because of his periods of unemployment.

As of his March 2015 interview, Applicant had not participated in financial counseling. He claimed he was living within his financial means, and believed he was capable of meeting his financial obligations. Applicant promised the investigator to contact his creditors and start making payment arrangements to resolve his delinquent debts. He claimed that he had learned his lesson and had no intentions on repeating his financial mistakes.

In his response to the FORM, Applicant submitted documentary evidence showing payments made and ongoing payment arrangements with a number of the creditors alleged in the SOR. The status of his SOR debts is as follows:

SOR ¶ 1.a alleged a \$3,140 delinquent debt to a bank. Applicant claimed he was making \$25 a month payments, but failed to present any documentary evidence to corroborate his claim.

SOR ¶ 1.b alleged a \$1,065 delinquent debt to a bank in collection. Applicant averred he would call the bank and set up a payment plan. He failed to present any documentary evidence to corroborate he set up a payment plan.

SOR ¶ 1.c alleged a \$1,868 delinquent rent account in collection. In his SOR answer, Applicant claimed he was saving money to settle the account. In his response to the FORM, he submitted documentary evidence showing he paid the debt in July 2016.

SOR ¶¶ 1.d and 1.f alleged the same account, owing \$464 to a bank. Applicant's documentary evidence shows he paid the account in February 2015.

SOR ¶¶ 1.e and 1.k alleged the same account, owing \$7,304 to a retailer. Applicant's documentary evidence shows he entered into a payment agreement and made the first \$270 payment in April 2015. He presented no evidence of additional payments since then.

SOR ¶ 1.g alleged s \$315 delinquent debt to a retailer. Applicant's documentary evidence shows he paid the debt in March 2015.

SOR ¶ 1.h alleged a \$110 delinquent medical account. Applicant disputed the debt and claimed he did not know anything about it.

SOR ¶ 1.i alleged a delinquent account, owing \$395 to a retailer. Applicant's documentary evidence shows he entered into a payment agreement and made four \$71 payments, starting in April 2016. The last documented payment was made in August 2016.

SOR ¶ 1.j alleged a \$473 delinquent debt to a credit card company. Applicant's documentary evidence shows he paid the debt in March 2015.

The record evidence documents Applicant's history of delinquent debt. However, Applicant presented documentary evidence to show that he has been in contact with his creditors, and that he resolved 8 of his 11 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

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 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

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

(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).

The financial considerations mitigating conditions in AG ¶¶ 20(a) through 20(d) apply and mitigate the security concerns. Applicant's documentary evidence shows that he contacted his creditors, established payment plans, and resolved 6 of the 11 debts alleged in the SOR before the SOR was issued. He subsequently resolved two additional debts. I find that his financial problems are under control.

Applicant's periods of unemployment likely contributed to or aggravated his financial situation. However, he candidly admitted he was negligent managing his finances because he was young and immature. After realizing the security concerns raised by his financial problems, Applicant initiated good-faith efforts to resolve them. He has established a track record of debt payments and promised to continue resolving his remaining delinquent accounts. On balance, Applicant presented sufficient information to establish that he has learned his lesson and has responsibly addressed his financial situation. He understands that he has to maintain his financial responsibility to be eligible for a security clearance. The financial considerations security concerns are mitigated.

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)).

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant omitted relevant and material information from his 2015 SCA when he failed to disclose that he had financial problems that included numerous delinquent accounts.

Applicant's omissions, if deliberate, would trigger the applicability the following disqualifying condition under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. (ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006)). Considering the evidence as a whole, including Applicant's age, education, experience working for government contractors, his 2015 statement to a government investigator, and his positive behavior after the background interview, I find that Applicant's omissions were not deliberate or made with the intent to mislead the Government. AG ¶ 16(a) is not applicable.

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 is a 34-year-old sheet metal worker employed with a federal contractor since September 2014. He presented some evidence of circumstances beyond his control that contributed to, or aggravated his financial situation (periods of unemployment); however, he also admitted to his own financial irresponsibility due to his age and immaturity.

After he was made aware of the security concerns raised by his financial problems, Applicant established a sufficient record of debt payments to mitigate the security

concerns. He also promised to resolved his remaining delinquent accounts. On balance, Applicant presented sufficient information to establish that he has learned his lesson and responsibly addressed his financial situation. He understands that he has to maintain his financial responsibility to be eligible for a security clearance. Financial considerations and personal conduct 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.k:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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