



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08636

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

08/07/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant 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. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 12, 2015. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on April 8, 2016, issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on May 16, 2016, submitted documents, 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 September 12, 2016. Applicant received the FORM on September 20, 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 11 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 June 1, 2017.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included her unauthenticated summary of interview with a government background investigator from September 2, 2015. (FORM, Item 4) 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. Applicant was informed 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.

Findings of Fact

Applicant admitted the three SOR factual allegations and submitted some documents in extenuation and mitigation. 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 32-year-old employee of a large federal contractor. He married his wife in June 2007, and they have four children, ages nine, seven, five and four. Applicant received an associate's degree in 2006. A federal contractor hired Applicant in August 2015, and he submitted his first security clearance application.

Applicant's employment history indicates that he was unemployed while attending college between August 2003 and July 2006; employed between August 2006 and January 2008; self-employed between November 2007 and November 2010; unemployed between November 2010 and October 2013; employed from October 2013 to July 2015 on a non-paying job (he worked for lodging accommodations); and he has been working for his current employer since August 2015.

Applicant is delinquent on two student loans that are in collection, totaling over \$23,500 (SOR ¶¶ 1.a and 1.b), and he owes a bank over \$4,569 for a charged-off credit card account. (SOR ¶ 1.c)

Applicant opened the credit card account alleged in SOR ¶ 1.c in 2004. He presented no evidence of any payments, payment arrangements, efforts to contact the creditor, or to otherwise resolve this account since he acquired the debt. During his September 2015 interview with a government investigator and in his answer to the SOR, Applicant stated he had wished to pay off the debt, but learned that the account would age out of his credit report by March 2016. He chose to wait for the passing of the statute of limitations instead of paying his debt. Applicant stated that his wife and

children are wholly dependent on him financially, and he saw no reason to reinstate the account because it would jeopardize his financial security. (FORM, Item 4; Answer)

Applicant blames himself for his financial problems. He explained that he caused himself a financial crisis when he quit his job to start his own company in 2007. His business failed in 2010. He claimed he was unable to find employment until October 2013. Applicant also averred he did not live beyond his means. Between April and November 2010, he lived with his parents. Between December 2010 and October 2013, Applicant lived in another country. He stated that during the later period he worked as a watchman securing construction equipment in exchange for a room but earned no money. In his August 2015 SCA, Applicant stated that he had not “worked for cash for more than five years.” (FORM, Item 3)

Applicant’s student loans have been delinquent at least since 2006. Following his 2015 interview, Applicant entered into a student-loan-rehabilitation agreement with his state. In September 2015, he agreed to make \$5 monthly payments to rehabilitate his two student loans. With his May 2016 SOR answer, Applicant submitted documentary evidence showing he made eight \$5 payments, the last one in May 2016.

In his October 2016 FORM response, Applicant submitted a pay and earnings statement showing his hourly-pay rate is \$13.86. He has approximately \$1,566 in an employer sponsored retirement account. His 2015 W-2 Form (Wage and Tax Statement) shows \$7,180 in earnings for that year. He also submitted W-2 Forms for tax year 2006 showing earnings of \$5,899; for tax year 2007 showing earnings of \$21,575; and for tax year 2008 showing earnings of \$1,002. He presented no evidence to show he has received credit counseling or that he follows a budget. The 2016 credit report on file shows Applicant took out a \$6,420 car loan in 2016, and opened a credit card account in 2015 with a \$254 balance as of August 2016. (FORM, Item 6)

Applicant presented little evidence about his current financial situation. It is not clear what financial support he has provided for his wife and four children, or whether his income is sufficient to pay for his family’s living expenses and debts.

Applicant received an employee of the month award in February 2016. The award indicates Applicant is considered to be a key team member who is professional and dedicated. His supervisors commended his honesty and excellent work ethic.

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 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. 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 file record. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability 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, 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

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].

(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 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's periods of underemployment, unemployment, and his failed business likely contributed to or aggravated his financial situation. However, Applicant's scant evidence is insufficient to establish that he was financially responsible under the circumstances. His student loans date from at least 2006. He presented no evidence of payments made before his September 2016 interview, or of any efforts to contact his creditors to resolve his financial problems.

Applicant is commended for his recent student-loan-payment agreement and the payments he has made so far. However, considering the period during which the loans were delinquent, the value of the payments being made, and that the agreement was established after confrontation, I cannot consider his actions as good-faith efforts to resolve the loan debts. Moreover, Applicant made no effort to pay or resolve the debt alleged in SOR ¶ 1.c. He elected to let the statute of limitations pass and indicated he does not intend to pay that debt.

(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)).

Applicant's evidence is insufficient to explain the reasons for his periods of unemployment, why he lived in another country for several years, where was his family during those periods, and how he supported himself and his family during the periods of unemployment and while living in another country. The record is not clear about Applicant's current financial situation, and whether his income is sufficient to pay for his family's living expenses and current debts. The evidence fails to show whether Applicant's financial problems are resolved or under control.

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 32-year-old employee of a federal contractor. He has established a reputation for his professionalism, dedication, and work ethic. Applicant is considered to be honest and a valuable employee.

Notwithstanding, Applicant 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.c:	Against 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