DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-05840
	)	
Applicant for Security Clearance	)	

Appearances

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

12/12/2017

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 November 14, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on June 9, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on August 10, 2016, with some comments, but failed to admit or deny any of the SOR allegations. He requested a decision based on the written record in lieu of a hearing. On September 17, 2016, the DOD Consolidated Adjudications Facility (CAF) instructed Applicant to admit or deny the SOR allegations. He failed to do so. The DOD CAF nonetheless forwarded the case to DOHA for further processing. I considered all the SOR allegations denied.

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

January 5, 2017. Applicant received the FORM on January 16, 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 did not respond to the FORM. 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 April 14, 2015. (FORM, Item 3) Applicant was informed he could object to the summary of his interview, and it would not be admitted or considered, 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. Applicant did not respond to the FORM and waived any objections. I admitted the FORM's proffered evidence and considered it.

Findings of Fact

Applicant answered the SOR with a statement indicating that he would continue to pay and take care of his debts. He further stated that would never betray his country or give up his freedom to pay some debts. He failed to admit or deny any of the SOR allegations. I considered all the SOR allegations denied. After a thorough review of the record evidence, I make the following findings of fact:

Applicant is a 56-year-old employee of a federal contractor. He graduated from high school in 1979. He enlisted in the U.S. Army in 1981, and honorably served until his discharge in 1986. He married his first wife in 1982 and divorced in 1983. He married his second wife in 2006 and divorced in 2009. He has two adult children, ages 26 and 32. As of his April 2015 interview, he was living with a cohabitant.

Applicant's employment history indicates that he has been employed since 1991, except for three periods of unemployment between December 2009 and January 2010; February 2012 and November 2012; and December 2012 and June 2013. A federal contractor hired Applicant in June 2013. Apparently, he has been working for his current employer since then.

In his response to Section 26 (Financial Record) of his June 2014 SCA, Applicant disclosed financial problems resulting from his divorce and periods of unemployment, which included a mortgage in foreclosure and a delinquent debt. He claimed he had established payment plans or that was in the process of doing so. He averred he intended to contact his creditors to resolve the debts.

A government background investigator interviewed Applicant in April 2015. During the interview, Applicant discussed the delinquent accounts he disclosed in his 2014 SCA. The investigator confronted him with other delinquent accounts he failed to

disclose. Applicant stated he had too many delinquent accounts to list them all. He explained that his delinquent debts resulted from his divorce, his periods of unemployment, and a tenant abandoning his rental property without notice causing the foreclosure of the mortgage loan.

Applicant told the investigator his financial status was not the best, but he had room to breathe, and was working on paying the debts. He stated he had paid some debts and had established payment plans with other creditors. He stated his intention to pay back his creditors, and to bring all his delinquent accounts current. He indicated no participation in debt counseling or financial courses to learn to remain current on his debts.

The SOR alleges five delinquent accounts and one judgment, most of which are the same delinquent debts Applicant addressed during his April 2015 interview. All the SOR accounts are established by the record evidence. Applicant claimed he had paid some of the accounts, established payment plans for others, and that some debts he did not recognize.

Applicant did not submit any documentary evidence in his response to the SOR, and he did not respond to the FORM. He did not provide documentation relating to his SOR debts such as: (1) proof of payments (checking account statements, photocopies of checks, or letters from creditors proving that he paid or made any payments to the creditors); (2) correspondence to or from the creditors to establish maintenance of contact;[1] (3) copies of credible debt disputes sent to the creditors or credit reporting companies indicating he did not believe he was responsible for the debts and why he held such a belief; (4) evidence of attempts to negotiate payment plans (settlement offers or agreements to show that he was attempting to resolve the debts); or (5) other evidence of progress or resolution.

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving his SOR debts. There is insufficient assurance that his financial problem is being resolved and will not recur in the future. Applicant presented little evidence about his current financial situation. It is not clear whether his income is sufficient to pay for his family's living expenses and debts, and whether his financial problems are resolved or under control.

Concerning SOR ¶ 1.a, Applicant stated to the investigator that the property was sold after foreclosure for more than he owed, and that he had no further financial liability. I note that Applicant purchased the property in 2007 for $126,578. The balance

[1] "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

at foreclosure was $113,822, and the property was sold in auction for $122,168 in May 2013. (Items 3 and 4) I find this allegation for Applicant.

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 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, 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;[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 are supported by the facts in this case. 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 most recent divorce occurred in 2009, and he has been living with a cohabitant since 2012. He failed to explain how his 2009 divorce continues to affect his ability to pay his delinquent accounts. Applicant's periods of unemployment likely contributed to or aggravated his financial situation. However, Applicant's evidence is

[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)).

insufficient to establish those periods of unemployment were not due to Applicant's fault, and that he was financially responsible under the circumstances.

Some of Applicant's delinquent SOR accounts date from at least 2009-2010. He presented no evidence of payments made, or of any efforts to contact his creditors to resolve his financial problems. Applicant was made aware of the government's security concerns about his finances when he submitted his 2014 SCA, during his 2015 interview with a government investigator, via the 2016 SOR, and through the January 2017 FORM. The FORM made it clear that Applicant needed documentation to support his claims of payments, disputes, and payment arrangements. He failed to document his claims.

Applicant's evidence is insufficient to establish that circumstances beyond his control prevented him from paying the debts, and that he was financially responsible. 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. There is insufficient assurance that his financial problem is being resolved and will not recur in the future. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

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.

I considered that Applicant's remaining five SOR debts total about $5,000. He did not present documentary evidence of efforts to pay or otherwise resolve the remaining SOR debts. The major SOR debt was resolved through foreclosure. Evidence of efforts to resolve the debt prior to foreclosure is missing. Without evidence to explain, mitigate, or rebut the financial concerns, Applicant's behavior shows a lack of judgment, unwillingness to abide by rules and regulations, unreliability, and untrustworthiness. 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

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.f:	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.

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JUAN J. RIVERA
Administrative Judge