



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00461

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2018

Decision

Noncommissioned

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond his control contributed to his recent financial problems and that he was responsible under the circumstances. His financial problems are being resolved and are under control. Financial considerations security concerns are mitigated. Clearance granted.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on June 30, 2014. He was interviewed by a government investigator on December 14, 2015. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on June 24, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on July 14, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on April 7, 2017. The DOHA issued a notice of hearing on May 10, 2017, scheduling a hearing for May 22, 2017. At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified and submitted

exhibit (AE) 1, post-hearing. All exhibits were admitted as evidence without objection, except for GE 5. DOHA received the hearing transcript (Tr.) on May 31, 2017.

Findings of Fact

Applicant admitted all of the SOR allegations (§§ 1.a, 1.b, and 1.d through 1.h), except for § 1.c, which he denied. His admissions to the SOR allegations and at his hearing 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 50-year-old employee of a federal contractor. He graduated from high school and attended college where he earned a bachelor's degree in 1992. He married in 1998, and has no children. His wife works as a musician and substitute teacher. She make about \$17,000 - \$20,000 yearly, and helps Applicant pay their debts and living expenses.

Applicant has been employed by different companies since 2007. His current employer, a federal contractor, hired him for a full-time position in October 2011. He has been working for the same employer and clearance sponsor since. Applicant also worked part time as a courier between 2009 and 2013. Applicant testified that he held a secret clearance between 1996 and 2002. He also held a public trust position while working for another government agency in 2011.

In response to Section 26 (Financial Record) of the 2014 SCA, Applicant disclosed that he had financial problems related to an investment (rental) property, expenses associated with repairs to the rental property and his home, and a lien imposed for a renter's unpaid utility bill. Applicant explained that he purchased a "Section 8" (Government subsidized) rental property in 2005. In October 2006, the renter left without notice, owing two month's rent, and leaving the property with extensive damage. Applicant repaired the property and kept paying the mortgage, but did not get a qualified tenant until the summer of 2008. He rented the property for less than the mortgage payment and had to make up the difference from his own pocket to pay the mortgage.

Applicant explained that maintenance and property repairs for the rental property and his home adversely affected his ability to pay the rental property mortgage and his home mortgage. He did not have the financial means to continue paying both mortgages, other debts, and his living expenses. Concerned about being financially overextended, Applicant contracted a company to help him do a short sale of the rental property. He claimed the company advised him not to make any more mortgage payment or to perform additional repairs on the property. The short sale did not go through. Applicant defaulted on the mortgage loan and the first mortgage holder foreclosed on the mortgage. (SOR § 1.b) The property was sold in auction. Applicant believes the proceeds of the sale released him of further financial liability towards the first mortgage holder. The February 2014 credit report in evidence shows a "0" balance on the account after the foreclosure. (GE 4)

Applicant owes over \$68,000 to the holder of the second mortgage for the rental property. (SOR ¶ 1.a) The credit report shows that the account was charged off in 2014. Applicant tried to get in contact with the creditor, but his inquiries were not answered. He has never been contacted by the second mortgage holder concerning the debt.

Concerning the debt alleged in SOR ¶ 1.c, Applicant's documentary evidence established the account was fraudulent and the creditor released him of responsibility. (Tr. 29-30) Applicant paid the judgment alleged in SOR ¶ 1.d in December 2015. (Answer to the SOR)

SOR ¶¶ 1.e through 1.h alleged traffic tickets. Applicant initially disputed the tickets and lost the appeal. He refused to pay them because he considered he was right and the tickets were unfair. At the hearing, Applicant realized the adverse possible consequences of his failure to pay his legal obligations and paid them. (AE 1)

Applicant's 2016 credit report shows a total of 24 trade lines (accounts): 21 accounts were noted as "R1" or "M1" (in good standing), and only the three accounts alleged in SOR ¶¶ 1.a, 1.b, and 1.c were noted as delinquent, charged off, or foreclosed. There are no other delinquent or collection accounts. He has not incurred any new delinquent debt. (GE 4)

Applicant's yearly income is about \$120,000. With his wife's earnings (\$17,000 - \$20,000) they live comfortably and have no financial problems. His financial situation is stable and he pays all of his current bills on time. He recognizes that his past financial problems resulted from listening to bad advice about buying the rental property, and making a bad business decision by purchasing the rental property. His financial situation was aggravated with the downturn of the real estate market between 2008 and 2012.

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.

While the case was pending a decision, the Director of National Intelligence implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, which replaced the 2006 AG, and are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the current AGs implemented by SEAD 4.

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, § 2. 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 record. He defaulted on a mortgage loan and it was foreclosed. The sale of the property released him of liability for the first mortgage. He still could be held financially responsible for over \$68,000 owed to the second mortgage holder. He also accumulated four parking tickets that he paid. 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, 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; 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.

Applicant's financial problems were, in part, caused by listening to and following bad advice about a real estate investment. His financial problems could also be attributed to, or were aggravated by, circumstances beyond his control – the downturn of the real estate market between 2008 and 2012.

Applicant resolved all of the accounts alleged in the SOR, except for the alleged \$68,000 debt to the second mortgage holder. Thus, his financial problems are ongoing. He presented evidence of some efforts to resolve his unpaid mortgages by contracting a company to conduct the short sale of the property. He also acted responsibly under the circumstances by paying those debts he could afford to pay. Thus, he demonstrated financial responsibility.

Applicant's current financial situation is stable and he is paying his bills on time. There is no evidence that he has financial problems. To the contrary, his credit report shows financial responsibility – there is no evidence of additional delinquent accounts or that he is living beyond his financial means. I find that his financial problems are resolved and under control. Considering the evidence as a whole, his inability to resolve the second mortgage debt does not reflect adversely on his ability and willingness to follow rules and regulations for safeguarding classified information.

Moreover, Applicant has learned from the clearance process. He is fully aware that he is required to demonstrate financial responsibility to be eligible for a clearance. His financial problems are unlikely to recur.

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) and 2(d). 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 50-year-old employee of a federal contractor. He has worked for federal contractors since 2011. He has held a clearance and positions of trust without any issues or concerns. Circumstances beyond his control contributed to or aggravated his recent financial problems. The record evidence is sufficient to establish that his financial problems are being resolved or are under control. The AG do not require an Applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An Applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan.

Considering the evidence as a whole, Applicant demonstrated a track record of paying his financial obligations. The financial issues concerning the former investment property were an isolated, aberrational event that is unlikely to recur. Applicant is aware that he has to maintain financial responsibility to be eligible for a clearance. The financial considerations 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.h: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge