



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



In the matter of:)
)
) ISCR Case No. 16-00490
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to demonstrate financial responsibility and that his financial problems have been resolved or are under control. The financial considerations security concerns are not mitigated. Moreover, he deliberately falsified his 2014 security clearance application (SCA) to hide his financial problems. Personal conduct security concerns are not mitigated. Clearance denied.

Statement of the Case

Applicant submitted an SCA on August 22, 2014. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on August 5, 2016, alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on August 24, 2016, and requested a decision on the written record, in lieu of a hearing.

After receipt of the file of relevant materials (FORM) in October 2016, Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me on April 21, 2017, and issued a notice of hearing on May 3, 2017, setting the hearing for May 17, 2017. At the hearing,

the Government offered seven exhibits (GE 1 through 7). GE 6 and 7, the FORM and a discovery letter (respectively), were marked and made part of the record, but not admitted as evidence. Applicant testified on his own behalf and submitted no documents even though I offered to leave the record open for him to supplement the record. GE 1 through 5 were admitted as evidence without objection. DOHA received the hearing transcript (Tr.) on May 26, 2017.

Findings of Fact

Applicant admitted owing the debts alleged in the SOR (1.c - 1.q). He denied falsifying his 2014 SCA (SOR 2.a - 2.b), and claimed that his failure to disclose his financial problems was a mistake. (SOR Answer) His admissions to the SOR 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 47-year-old senior electrician who was employed with a federal contractor. He lost his position when his interim clearance was withdrawn pending adjudication of the SOR concerns. His then-employer is still sponsoring Applicant's clearance application. His employment is conditioned on his eligibility for a clearance.

Applicant graduated from high school and completed some vocational education. He married his wife in 2003, and he has a 10-year-old daughter and two grown stepsons, one of whom is serving in the Marine Corps. Applicant believes he was granted a facility access clearance when he worked at a correctional facility in 2013. This is his first SCA for a DOD clearance.

Applicant was employed between June 2001 and November 2012. He stated that he left his employment due to family problems. He was unemployed between December 2012 and February 2014. He worked for a federal contractor between March 2014 and December 2016. Applicant has been unemployed and underemployed since December 2016. His wife is working and helps to pay the family's living expenses.

Section 26 (Financial Record) of the 2014 SCA asked Applicant to disclose whether he had any financial problems. Specifically, he was asked whether during the preceding seven years he had: filed a petition under any chapter of the bankruptcy code, a judgment entered against him, defaulted on any type of loans, property repossessed or foreclosed, and had any debts turned over to a collection agency. Applicant answered "No" to all the financial questions. He failed to disclose that: he filed for Chapter 13 bankruptcy protection in 2010, had defaulted on a mortgage loan and the home was repossessed, had a judgment entered against him in 2012, and had accumulated all the delinquent or in collection accounts alleged in the SOR.

All of the accounts alleged in the SOR are established by the record evidence and Applicant's admissions. Concerning his Chapter 7 bankruptcy filing in 1995, Applicant explained that he developed financial problems because he was young and immature. The next 10-15 years he worked mostly side jobs, but he did not have steady

employment. He tried to open a garage business. He was employed between 2001 and 2012, making at best \$16 an hour.

Applicant testified he filed for bankruptcy in 2010 because of family problems. He noted that he was getting behind on his bills, he was travelling 45 miles each way to get to work, made a few bad financial decisions, and was financially overwhelmed. (Tr. 26-27) Applicant initially filed a Chapter 7 bankruptcy that was converted to a Chapter 13 reorganization in May 2010. The bankruptcy was dismissed in October 2011 because of Applicant's failure to make the scheduled payments, provide a tax transcript, and turn over the proceeds of a tax refund to the trustee.

SOR 1.c through 1.q allege many of the accounts included in the 2010 bankruptcy filing. The bankruptcy was dismissed and those accounts are still delinquent. Applicant had medical problems, including surgery around 2013 that prevented him from working for close to a year. Because he was unemployed, Applicant had no medical insurance. He was not covered under his wife's work medical insurance. He claimed he believed his medical debts were being paid through a state medical card (Medicaid), and he did not know about all the delinquent medical bills until he received the SOR. (Tr. 32-34)

Applicant was employed between March 2014 and December 2016. He claimed that during that period he made some calls to his creditors to try to resolve or pay some of his debts. Applicant submitted no documentary evidence to corroborate his claims of efforts to remain in contact with his creditors, to pay, or to otherwise resolve his delinquent debts or the 2012 judgment. He presented no documentary evidence of any payments made, payment agreements, or that he disputed or resolved any of the SOR accounts.

Concerning his defaulted mortgage loan and home foreclosure (SOR 1.c), Applicant testified the house was foreclosed in about December 2015, and later sold in auction. He believes that he owes no delinquent balance. (Tr. 31) Concerning the 2012 judgment entered against him (SOR 1.j), Applicant claimed he paid the rent in cash, but did not ask for a receipt. Sometime later, the creditor filed an action in court to recover the unpaid rent. He testified he was not aware about the lawsuit or the judgment until after it was entered against him.

Concerning his failure to disclose his financial problems in his 2014 SCA, Applicant explained that this is the first SCA he ever completed, and he did not know how to fill it out. Except for his wife's assistance, Applicant had no help to complete the SCA. He believed he did not have to disclose his 2010 bankruptcy filing because it was dismissed. He claimed he did not know about the 2012 judgment, the delinquent accounts, and the accounts turned over to collection agencies. He provided no explanation for his failure to disclose the defaulted mortgage loan and the repossessed home.

Applicant noted that his current financial situation is not good. He and his wife are having difficulty making ends meet because he has been unemployed or underemployed since December 2016. He loves his job and loves working for the Government. Applicant credibly professed his love for the United States. He promised to consolidate and pay all of his delinquent accounts if he gets a clearance and is allowed to return to work. Presently, he does not have the money to pay the SOR debts. As of his hearing, he had not participated in any financial counseling. However, he promised to do so when he gets his job back.

Applicant considers himself to be a good and dedicated worker. He also believes that he is responsible and mature enough to hold a clearance. He repeatedly testified that he is not a security risk. He noted that his father was killed serving the United States in Vietnam and his two brothers served in the military. He would like the opportunity to do his best working for the Government.

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, *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 or sensitive 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 long history of failing to pay his debts is documented in the record. The SOR debts are established by the credit reports in evidence and by Applicant's admissions. He filed for bankruptcy in 1995 and again in 2010, and has continued to have financial problems to present. 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 above 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), 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;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 standard applicable in security clearance decisions is that articulated in

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. Jun. 4, 2001)).

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. Sep. 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 long-term financial problems are recent and ongoing. There is some evidence to establish that part of his financial problems resulted from circumstances beyond his control such as his periods of unemployment and underemployment and his medical problems. Even so, Applicant presented no evidence of good-faith efforts to remain in contact with his creditors, to pay any of his debts, or to otherwise resolve his delinquent accounts. There is no evidence to show Applicant was financially responsible under his circumstances. There is no evidence he participated in financial counseling.

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 2014 SCA when he failed to disclose that he had financial problems that included filing for bankruptcy, a 2012 judgment entered against him, a defaulted mortgage loan, a repossessed home, and numerous delinquent and in collection 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, work experience, and his testimony and demeanor while testifying, I find that Applicant’s omissions were deliberate or made with the intent to mislead the

Government. AG ¶ 16(a) is applicable. Additional inquiry about the possible applicability of mitigating conditions is required.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant's evidence is insufficient to mitigate the Guideline E security concerns. The financial questions in Section 26 of the 2014 SCA are straight forward and easy to understand. Assuming, for argument purposes, that Applicant believed he did not have to disclose the dismissed bankruptcy, and that he did not know about the 2012 judgment, there is still no reasonable explanation for his failure to disclose his numerous other accounts that were delinquent or in collection. Applicant knew he had not paid any of the delinquent accounts he declared in his dismissed 2010 bankruptcy petition, and that those accounts were still outstanding. He disclosed not even one delinquent account.

Applicant also knew he had defaulted on his mortgage loan, and that his home was foreclosed. Notwithstanding, he failed to disclose those events even though the

SCA questions specifically asked about them. Applicant elected to mislead the government about his financial situation and indicated he had no financial problems or any delinquent debts. Considering the evidence as a whole, I find Applicant deliberately falsified his 2014 SCA.

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 Guidelines F and E in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant failed to demonstrate financial responsibility and that his financial problems have been resolved or are under control. The financial considerations security concerns are not mitigated. Moreover, he deliberately falsified his 2014 SCA to cover his financial problems. Personal conduct 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.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	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