



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



In the matter of:)	
)	
)	ISCR Case No. 16-02782
)	
Applicant for Security Clearance)	

Appearances

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

11/13/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond his control contributed to his financial problems and that he was financially responsible under the circumstances. He disclosed his financial problems in his 2016 security clearance application (SCA). His financial problems are being resolved. Clearance granted.

Statement of the Case

Applicant submitted an SCA on February 11, 2016. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on October 27, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on December 5, 2016, 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 January 4, 2017. Applicant received the FORM on January 23, 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. I admitted and considered all the FORM's proffered evidence.

Findings of Fact

Applicant admitted the sole SOR allegation (SOR ¶ 1.a), with explanations. His admission to the SOR is incorporated herein as a finding of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a federal contractor. He married in 1982 and divorced in 2006. He married his current wife in 2010. He has four children of these marriages, ages 33, 29, 18 (stepson), and 5.

Applicant graduated from high school and enlisted in the U.S. Army. He served on active duty between July 1981 and February 2004, when he was honorably retired after 23 years of service. While in the service, Applicant possessed a top-secret clearance that has been continued to present.

Applicant's employment history after his retirement is somewhat sketchy. He provided no information about any employment between 2004 and 2006. He indicated that he has worked part-time for a federal contractor since February 2006, and that his current employer, a federal contractor, hired him for a full-time position in September 2015. He was self-employed between January 2012 and March 2013.

Applicant disclosed in his February 2016 SCA his financial problems, which at the time included two delinquent credit card accounts, one of which is alleged in the SOR. The other credit card account was apparently paid or resolved, and it is not alleged in the SOR.

Applicant explained in the 2016 SCA, and in his response to the SOR, that his financial problems resulted from circumstances beyond his control. He was ill during part of 2014, was unable to work, and lived from his retirement income and savings. Additionally, in 2014, he provided financial assistance to his mother by paying some of her medical bills. He also paid for some of his father-in-law's medical and burial expenses. Applicant used his credit cards to pay for his family travel, lodging, and burial expenses for his father-in-law. In 2015, he paid for his mother's eye surgery. All these factors placed a financial hardship on him. He used his credit cards to pay for these extraordinary expenses and he did not have sufficient earnings to pay for his living expenses and debts. Thus, some of his debts became delinquent.

Applicant started working full-time for his current employer in September 2015 and immediately started addressing his debts. He stated in his SOR answer that in a short period he was able to bring his accounts current, with the exception of the account alleged in the SOR. Applicant's statement is corroborated by the 2016 credit report included in the FORM (Item 4). It shows Applicant had a total of 31 trade lines (accounts). Only 9 of these accounts had a running balance, and only the account

alleged in the SOR was delinquent. The remaining 30 accounts were noted a “pays account as agreed.”

Applicant stated that this was the first time he ever had any financial problems. He promised to avoid any financial problems in the future. He also promised to continue paying his legal debts and to resolve his financial problems. The file has evidence showing that Applicant acted responsibly under the circumstances and his actions so far showed a good-faith effort to meet and fulfill his financial obligations.

Policies

The SOR was issued under Executive Order (Exec. Or.) 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 Security Executive Agent implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective 8 June 2017, which replaced the 2006 AG. 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. Between 2014 and 2015, Applicant acquired debts beyond his financial means, one of which remains delinquent. 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;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 *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).

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. June 4, 2001)).

Applicant's financial problems are ongoing and recent. However, his financial problems could be attributed to, or were aggravated by, circumstances beyond his control – his personal illness prevented him from working, the terminal illness and death of his father-in-law (increased travel, lodging, and medical expenses), and he provided financial assistance to his mother. Considering the evidence as a whole, it shows that his financial problems occurred under circumstances unlikely to recur.

The analysis of whether Applicant acted responsibly under the circumstances is not difficult considering the evidence. The credit report shows that as of September 2016, Applicant had 31 accounts. Only 9 of these accounts had a running balance – 8 were current, and only the account alleged in the SOR was delinquent. The remaining 30 accounts were noted a "pays account as agreed." Considering the record as a whole, the evidence shows that Applicant acted responsibly under the circumstances. Whatever financial problems he had, he made efforts to resolve his financial problems, and paid his delinquent financial obligations, except for the one alleged in the SOR. There is no evidence of any additional delinquent accounts since he filed his 2016 SCA.

In sum, Applicant's evidence is sufficient to establish that circumstances beyond his control caused the financial hardship and prevented him from paying some debts. He acted responsibly under the circumstances. He disclosed his financial problems in his 2016 SCA. He is paying his delinquent debts and his current financial situation is improving. I find that there are clear indications that his financial problem is being resolved or is under control. Given additional time, Applicant will pay his remaining delinquent account.

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 57-year-old employee of a federal contractor. He retired from the Army after 23 years of honorable service. During his service, he held a clearance that has been continued to present. Circumstances beyond his control contributed to or aggravated his financial problems. The record evidence is sufficient to establish that he was financially responsible under the circumstances and that his financial problems are being resolved or are under control. 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

Subparagraph 1.a:

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