



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



In the matter of:)	
)	
REDACTED COPY)	ISCR Case No. 17-01597
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/05/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to establish a track record of financial responsibility. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 8, 2016. He was interviewed by a government investigator on March 3 and 17, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on October 20, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 14, 2017, 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 supporting the security concerns, was provided to Applicant by letter dated November 29, 2017. Applicant received the FORM on December 11, 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 March 23, 2018. Lacking any objections, I admitted and considered the Government's proposed evidence.

Findings of Fact

Applicant admitted the SOR allegation in ¶ 1.a. His admission 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 46-year-old systems analyst working for a federal contractor. He graduated from high school in 1989, and earned a bachelor's degree in 1993. He married his wife in 1993. They have four children, ages 23, 22, 15, and 13.

Applicant has worked full time for federal contractors since 2005. He has possessed a secret clearance during an unidentified period. Except for the security concerns raised in the SOR, there is no evidence of any other issues of concern.

In his response to Section 20C (Foreign Travel) of his 2016 SCA, Applicant disclosed he traveled as a tourist to Mexico in March 2014, Netherlands and Germany in August 2014, and Belize and Honduras in December 2015. Apparently, the stays were for about one to five days in each country.

In his response to Section 26 (Financial Record) of his 2016 SCA, Applicant disclosed having no financial problems or delinquent accounts. During his March 2017 interviews, Applicant was confronted with the delinquent account alleged in the SOR. At the time, Applicant indicated he had no knowledge of the account and promised to look into it.

In his SOR Answer, Applicant admitted that the account alleged in SOR ¶ 1.a is a debt he owes. He stated he had taken steps to start paying the debt. He claimed he was working with the creditor to repay the debt. He promised to make timely payments, as agreed, to ensure the debt was paid off. He failed to submit documentary evidence to support his claims.

Applicant noted that he has only one delinquent account. All of his other debts are current and in good standing. His statements are corroborated by the credit reports. (FORM, Items 5, 6) Applicant has taken pride in working in support of the U.S. Government since 2005. He promised he would do nothing to jeopardize our great nation. (Answer) Applicant told the investigator in March 2017, that his current financial situation was good. He stated that he was meeting all of his financial obligations on time.

Applicant provided no explanation as to why the account became delinquent. According to the credit reports, he opened the account in 2001, stopped making payments on it sometime before 2011, and the account was charged off in about 2011. He provided no explanations about why he stopped making payments. Applicant

submitted no documentary evidence of contacts with the creditor when he began to experience financial problems, or of any payments made, or payment agreements established, or that he has otherwise resolved the account.

Applicant presented no recent evidence about his current financial situation (income, outstanding debts, whether his income is sufficient to pay for his living expenses, and whether his financial problems are resolved or under control). He gave no indication that he had participated in financial counseling.

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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 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 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 financial problems are documented in the record. He opened an account in 2001, and apparently made payments on it until about 2011. The account has been delinquent since 2011. AG ¶ 19 provides 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.

The following 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, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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. 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. Even though this is a single delinquency, it is nonetheless ongoing and unresolved. Applicant failed to explain his past financial problems, what caused them, and what actions he has taken since then to become financially responsible. In light of the lack of evidence about his current financial posture and his four vacation trips to foreign countries over the years, Applicant did not present sufficient evidence of a good-faith effort to pay his debt or that he has been financially responsible under his circumstances. I also note that he failed to disclose his delinquent debt until he was confronted with it.

Applicant receives credit for not having any other delinquent accounts. Notwithstanding, in light of the lack of evidence concerning the reasons for the delinquency, of his efforts to resolve the debt, and about his current financial situation, Applicant's evidence is insufficient to demonstrate financial responsibility, or that his financial problem is being resolved. The financial considerations security concerns are not mitigated.

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. Security Executive Agent Directive (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, 46, has been employed with federal contractors since 2005, and has held a clearance for an undisclosed period. His evidence is insufficient to establish a track record of financial responsibility. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. Unmitigated financial considerations security concerns lead me to conclude that granting a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his delinquent debt, a healthy financial picture, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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:	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 continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge