



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



In the matter of:)
)
) ISCR Case No. 17-01654
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

07/05/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to demonstrate financial responsibility, or that his financial problems are being resolved. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 18, 2015. He was interviewed by a government investigator on February 14, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on November 7, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on December 20, 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 March 9, 2018. Applicant received the FORM on March 14, 2018. 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 June 12, 2018. Lacking any objections, I admitted and considered the Government's proposed evidence.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from February 14, 2017. (FORM, Item 4) 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

In his SOR answer, Applicant admitted the three SOR debts, but denied that his debts raised security concerns. He submitted comments and documents in mitigation. His admissions 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 51 years old. He is a graduate of a service academy, and served honorably for seven years on active duty and three years in the Inactive Reserve. He married his wife in 1990, and they have two adult children, ages 24 and 22.

Applicant provided no information concerning his employment between, when he was discharged from the service in 1998 and 2003, when he started working for federal contractors. Applicant worked for defense contractors between 2003 and December 2013. He was unemployed between December 2013 and May 2015. He was hired by a federal contractor in May 2015, and by his current employer and clearance sponsor in June 2016. Applicant was granted a clearance while in the service in about 1989. It appears his clearance was continued to present, and he seeks the continuation of his clearance which is required for his work with his current employer.

In response to Section 26 (Financial Record) of his May 2015 SCA, Applicant disclosed he had financial problems related to his 16-month unemployment period from December 2013 through June 2015. He used his credit cards and withdrew money from his 401(k) retirement plan to pay for his living expenses. He was unable to pay his credit cards and some became delinquent, including the two alleged in the SOR. In 2014, he withdrew funds from his 401(k) retirement account and acquired a tax liability. The IRS filed a lien against him in 2014.

Applicant disclosed his financial problems in his 2015 SCA. During his February 2017 interview, Applicant discussed with the government investigator his financial problems and the delinquent accounts that were later alleged in the SOR.

In his SOR Answer, Applicant explained his delinquent debts resulted from circumstances beyond his control – his period of unemployment. However, he failed to explain the circumstances surrounding his unemployment. It is not clear whether he was fired for misconduct or he decided to quit, or was laid off, or terminated for other reasons. Applicant also averred he made good-faith efforts to repay his debts because he used his savings and retirement accounts to pay for his living expenses and some of his tax debts. Applicant further claimed he established payment plans to resolve the debts alleged in SOR ¶¶ 1.a and 1.b. His documentary evidence is insufficient for me to conclude that he established such payment arrangements, or that he has been making regular payments in accordance with his payment arrangements.

Attached to his SOR response, Applicant submitted documents showing he postdated two checks and presented them to the creditor collecting both accounts alleged in SOR ¶¶ 1.a and 1.b in August 2017. There is no evidence showing that the checks cleared, or that the payments were made pursuant to an existing payment arrangement, or that Applicant has been making consistent payments pursuant to an agreement.

Concerning the tax lien alleged in SOR ¶ 1.c, Applicant claimed in his 2015 SCA that he had “negotiated an abatement with the IRS through December 2015” because of his period of unemployment. In his 2017 SOR response, Applicant claimed the IRS issued him a “forbearance” while he recovered from his long-term unemployment, and that he established an installment agreement with the IRS to pay \$381 monthly. Applicant’s documentary evidence failed to establish his claims.

The IRS letter submitted (dated November 27, 2017), states that the IRS denied Applicant’s May 23, 2017 request for an installment agreement. The IRS wanted a larger monthly payment. Applicant apparently complied and submitted a request for an installment agreement for \$381 monthly. The installment agreement request submitted by Applicant was dated December 2017. There is no evidence showing that Applicant has made any payments pursuant to the agreement.

Applicant presented no 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 participated in financial counseling. I note, however, that the credit report in evidence shows Applicant settled and paid at least five other accounts not alleged in the SOR.

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 *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 was unemployed from December 2013 to June 2015, and acquired the three delinquent accounts alleged in the SOR, totaling about \$64,000. AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual federal, state or local income tax returns or failure to pay annual federal, state, or local income tax are required". The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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. Applicant's financial problems are ongoing and unresolved. Applicant did not present sufficient evidence of good-faith efforts to pay his debts or that he has been financially responsible under his circumstances.

After a period of unemployment, Applicant found employment in June 2015. He claimed in 2017 that he had established payment arrangements with his creditors, but failed to present documentary evidence to substantiate his claims. He presented evidence that he submitted two postdated checks to a credit collector, but it is not clear whether the checks cleared. He established an installment arrangement with the IRS in December 2017, but presented no evidence of any payments made following the agreement.

Applicant receives credit for settling and paying other accounts not alleged in the SOR. I also considered that Applicant's period of unemployment likely created, contributed to, or aggravated his financial problem. However, there is no evidence explaining why Applicant was unemployed. If his unemployment period was due to his own misconduct, then his unemployment period could not be considered as a circumstance beyond his control. It is Applicant's burden to explain the reasons for his unemployment and his inability to address his delinquent debts sooner.

In light of the lack of evidence concerning his efforts to resolve his debts, and lack of information about his current financial situation, Applicant's evidence is insufficient to demonstrate financial responsibility, or that his financial problems are 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, 51, honorably served 10 years in the service. He has been employed with federal contractors intermittently since 2003, and has held a clearance since 1989. 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 debts, 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
Subparagraphs 1.a-1.c:	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