



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



In the matter of:)
)
) ISCR Case No. 17-02742
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2018

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 January 7, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on September 15, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on October 13, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on April 13, 2018, and issued a notice of hearing on June 6, 2018, setting the hearing for June 27, 2018. At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified and submitted two exhibits post-hearing (AE 1 and 2). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on July 6, 2018.

Procedural Issue

Applicant received the Notice of Hearing (NOH) two days before his hearing. At hearing, Applicant stated that he had previously agreed to the hearing date, had sufficient time to prepare and was ready to proceed. He affirmatively waived his right to 15 days of advanced notice of his hearing. (Tr. 13-15)

Findings of Fact

In his SOR answer, Applicant admitted six of the seven SOR financial allegations (§§ 1.a, 1.b, and 1.d through 1.g). He denied SOR § 1.c. He submitted comments in mitigation and explanation. 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 35 years old. He attended college from 2000 to 2007, and completed a bachelor's degree. He is currently working on his master's degree, but has delayed attending school to resolve his financial problems and has no anticipated completion date. He never married and has no children.

Applicant has been working for federal contractors since 2006. He worked for the same federal contractor between 2006 and January 2018. He was briefly unemployed in 2013 when his employer laid him off and then rehired him about 45-60 days later with a substantial reduction in salary (from \$62,000 to \$48,000, about 33 percent less income). He was granted a secret clearance in 2006 that was upgraded to top-secret in 2009. His clearance has been continued to present. Applicant was hired by his current employer and clearance sponsor in January 2018. 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 2016 SCA, Applicant disclosed he had financial problems, including a lien placed on his apartment for delinquent home owner association fees, a delinquent mortgage pending foreclosure, delinquent consumer accounts, and delinquent student loans. He stated some of the financial problems were due to him being a victim of identity fraud.

At hearing, Applicant explained that his financial problems resulted from his two-month unemployment period in 2013, and his subsequent 33-percent salary reduction. His reduced income was insufficient to pay for his living expenses and accumulated debts. He used his credit cards to pay for his living expenses. He was unable to pay his credit cards and some of his consumer debts, which became delinquent.

Moreover, Applicant testified that when he was laid off and his salary was reduced, he suffered a mental or emotional breakdown and depression that prevented him from fully addressing his financial problems until recently. He testified that he had to seek psychiatric help to overcome his depression. He presented no documentary evidence of any psychiatric or mental treatment. (Tr. 24) Applicant did not start to

address his financial problems until after his interview with a government investigator. The investigator motivated him to start addressing his delinquent obligations and repair his credit. Applicant believes he has made good strides to repair his finances and he has his financial situation under control. (Tr. 25)

Concerning the delinquent mortgage in foreclosure alleged in SOR ¶ 1.a, Applicant explained that he had been in contact with the creditor since 2015 trying to obtain a mortgage modification. He stated that he had retained an attorney to help him negotiate a payment arrangement and a mortgage modification, but the attorney was unsuccessful. (Tr. 33) He averred that in September 2017, the creditor finally agreed to allow him to rehabilitate the mortgage and possibly modify it. Applicant testified that he paid \$1,000 monthly between January and April 2018, in anticipation of the mortgage modification. However, shortly before his hearing, he was informed that the modification would be denied because the property was under a lien. (Tr. 31-34)

Applicant's HOA filed a lien against his property for unpaid fees. (SOR ¶ 1.g) Applicant testified that he had paid no HOA fees and he had made no mortgage payments from 2013, until he allegedly started to make the \$1,000 mortgage payments in January 2018. He presented no documentary evidence of any mortgage payments made in 2018. In July 2018, Applicant submitted a settlement offer to the HOA, which was being considered. (AE B) There is no evidence concerning the outcome of that offer.

Regarding the debts alleged in SOR ¶¶ 1.b, and 1.d through 1.f, Applicant testified that he did not make any payments on these debts or establish any payment agreements because he wanted to address his large delinquent debts first (some payday loans, the mortgage, and the lien). He took large payday loans with high interest to pay for his truck and various delinquent accounts. He had to pay those first before addressing other debts. He promised to address these SOR debts the day after the hearing. (Tr. 36) He submitted no evidence of any contacts with creditors, payments made, or payment arrangements established concerning these SOR debts.

Applicant denied the debt alleged in SOR ¶ 1.c, because it was not his account and it was the result of identity theft. His bank honored his fraud claim and gave him credit for the debt. (AE A) I find SOR ¶ 1.c for Applicant.

Concerning his current financial situation, Applicant testified he is making \$58,000 yearly. His monthly take home pay is about \$2,600. He has about \$400 remaining at the end of the month after paying his living expenses and debts. He claimed he uses some of his remaining income to pay other debts. He noted that he only buys items that are absolutely necessary. He had no new delinquent accounts.

After his hearing, Applicant contracted the services of a credit repair law firm to help him repair his credit. (AE B) He also filed an amended return for his 2015 income taxes, which the IRS is evaluating. (AE B) He owes his state back taxes for tax year 2015, but he believes that his amended return will clear him of any income tax liability.

Applicant's July 2017 credit report shows 46 accounts with only five of them delinquent (alleged in the SOR). Many of the 46 accounts are related to student loans. At hearing, Applicant acknowledged owing about \$110,000 in student loans, which are currently deferred. Applicant has no current budget and has not participated in financial counseling, but he is considering doing so in the near future. (Tr. 46-47)

Applicant's references consider him to be responsible, hardworking, diligent, and trustworthy. They are aware of his financial and medical problems. They recommended his eligibility for a clearance.

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 AGs 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 for about two months in 2013, and was rehired with a 33 percent reduction in salary. Following his salary reduction, Applicant developed depression (mental problems) and failed to address his financial obligations, and acquired the delinquent accounts alleged in the SOR. AG ¶ 19 provides 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 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; 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 an 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 financial problems could be attributed to his employer letting him go for a period of two months in 2013, his 33 percent reduction in pay when rehired, and his subsequent depression. Notwithstanding, Applicant did not present sufficient evidence of good-faith efforts to pay his debts or that he has been financially responsible under his circumstances.

Applicant claimed that he contacted his mortgage creditor, retained an attorney to help him negotiate with his creditor, and established a mortgage rehabilitation payment arrangement. He failed to present documentary evidence to substantiate his claims. Applicant receives credit for settling and paying other accounts not alleged in the SOR. He also receives credit for disputing the account alleged in SOR ¶ 1.c. However, considering the evidence as a whole, 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, 35, has been employed with federal contractors and has held a clearance since 2006. 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.b, and 1.d – 1.g:	Against Applicant
Subparagraph 1.c:	For 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