



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



In the matter of:)
)
) ISCR Case No. 17-03311
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

05/11/2018

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 13, 2017. He was interviewed by a government investigator on July 25, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on October 12, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 8, 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 January 2, 2018. Applicant received the FORM on January 18, 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 April 13, 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 July 25, 2017. (FORM, Item 3) 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

Applicant admitted all of the SOR allegations with comments. 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 63 years old. He enlisted in the U.S. Navy and honorably served in the Inactive Reserve between August 1984 and September 1994. He earned a bachelor's degree in 1996, and worked on a master's degree between 2013 and 2016, but did not earn a degree. He married his wife in 1979, and they have two adult children, ages 35 and 32.

Applicant worked full-time for a federal contractor between 2005 and 2015. He was unemployed between March 2015 and June 2015. He worked for a federal contractor between June 2015 and March 2016. He was unemployed between March 2016 and September 2016. He worked for two federal contractors between September 2016 and July 2017. He was terminated from his last employment because of poor performance and his use of profanity. A large federal contractor offered Applicant a position in April 2017, which is contingent on his eligibility for a clearance. Applicant stated that he was granted a top-secret clearance in June 1986. It is not clear whether his clearance was continued after his service discharge.

In response to Section 26 (Financial Record) of his 2017 SCA, Applicant disclosed he filed for Chapter 7 bankruptcy protection, and was discharged of all dischargeable debts in 2011. He also disclosed having financial problems and listed the delinquent accounts alleged in the SOR. During his July 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 stated that he filed for Chapter 7 bankruptcy protection (SOR ¶ 1.a) on the advice of a lawyer he should have disregarded. He claimed he was in a financial crisis because his wife lost two jobs in a short period, and he did not have the income to pay his living expenses and financial obligations. He averred he contacted his creditors and attempted to arrange payment plans, but he could not meet the creditors' demands. He returned one vehicle to the seller to reduce his monthly obligations. He was discharged of about \$350,000 of debt through the Chapter 7 bankruptcy.

In his 2017 SCA and during his July 2017 interview, Applicant stated he filed for bankruptcy protection in 2011, because after he purchased a second home, the housing market collapsed and he was unable to sell his first home. He could not afford to make both mortgage payments. He averred he used all of his savings before he was forced to file for bankruptcy protection. He did not mention his wife losing two jobs as a contributing factor for his bankruptcy filing in his 2017 SCA or during his July 2017 interview.

Concerning the account alleged in SOR ¶ 1.b, Applicant explained in his SOR Answer that he co-signed an apartment lease for his adult son, who was having financial difficulties. His son lost his job and stopped paying the rent. The landlord filed suit and obtained two judgments against Applicant. In his November 2017 SOR answer, Applicant claimed his son was now working and had set up a payment plan with the creditor. Applicant claimed he contacted the collection agency and agreed to make the payments if his son defaulted on his payments again. Applicant presented no documentary evidence to support his claims or that any payments have been made.

In his July 2017 interview, Applicant stated the creditor agreed to settle the debt, and that Applicant was working with the creditor to establish a payment plan. He promised to pay the debt, if he was ever financially able to do so. He failed to submit documentary evidence to support his claims.

Concerning the account alleged in SOR ¶ 1.c, Applicant explained he took the loan because he was unemployed and needed money to pay his living expenses. He claimed he contacted the creditor and established a payment plan to start in November 2017. He averred the debt was no longer delinquent. He failed to submit documentary evidence to support any of his claims.

Concerning the account alleged in SOR ¶ 1.d, Applicant explained he purchased a vehicle in 2015 and was forced to return it to the creditor when he became unemployed and could not afford the payments. He claimed he had been in contact with the creditor and established a payment plan, starting in December 2017. He failed to submit documentary evidence to support any of his claims. I note, however, that the credit reports in evidence show Applicant settled and paid other accounts not alleged in the SOR.

Applicant highlighted that he served his country for 10 years in the U.S. Navy and remains a steadfast and loyal citizen. He acknowledged he made mistakes dealing with money, but never contemplated or attempted any illegal activities to rectify his situation. He is an American and will continue to defend his country and honor his service vows. Applicant promised he would do nothing to jeopardize our great nation.

Applicant provided no explanations as to why he was unemployed between March and June 2015, and between March and September 2016. He worked for a company between January and July 2017, but was terminated because of poor performance and his use of profanity. Applicant submitted no documentary evidence of contacts with creditors when he began to experience financial problems, or of any payments made to the creditors alleged in the SOR, or of payment agreements established.

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 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 was discharged of all of his dischargeable debts in 2011 (about \$350,000). Since then, he acquired three delinquent accounts, totaling over \$29,000. 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 these 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. Applicant's financial problems are ongoing and unresolved. He failed to explain his past financial problems, what caused them, and what actions he has taken to become financially responsible. Applicant did not present sufficient evidence of good-faith efforts to pay his debts or that he has been financially responsible under his circumstances. I also note the inconsistency in the explanations he provided to the investigator during his 2017 interview and his SOR answers. Applicant's inconsistent statements adversely impact his credibility and reduce the weight of his favorable evidence.

Applicant receives credit for settling and paying other accounts not alleged in the SOR. I also considered that Applicant's periods of unemployment likely contributed or aggravated his financial problems. However, there is no evidence explaining why Applicant was unemployed. If his unemployment periods were due to his own misconduct, as it appears was the case in 2017, then his unemployment periods could not be considered as a circumstance beyond his control.

In light of his conflicting explanations, 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, 63, served 10 years in the Navy. He has been employed with federal contractors intermittently 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 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.d:

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