



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED COPY) ISCR Case No. 17-03401
)
 Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

04/03/2018

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. His financial problems are being resolved and are under control. Clearance granted.

Statement of the Case

Applicant submitted security clearance applications (SCA) on October 14, 2013, and June 3, 2016. He was interviewed by government investigators on January 9, 2014, and April 24 - 25, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on October 27, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 9, 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 December 12, 2017. Applicant received the FORM on December 19, 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 responded to the FORM with a four-

page statement (with a seven-page enclosure) on January 11, 2018. The case was assigned to me on March 23, 2018. The parties raised no objections, and I admitted and considered all the parties' proffered evidence.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included unauthenticated summaries of his interviews with government background investigators from January 9, 2014, and April 24 - 25, 2017. (FORM, Items 5, 6) Applicant was informed he could object to the summary of his interviews, and they would not be admitted or considered, or that he could make corrections, additions, deletions, and update the documents to make them 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 responded to the FORM and raised no objections. I admitted the parties' proffered evidence and considered it.

Findings of Fact

Applicant admitted all of the SOR allegations (¶¶ 1.a through 1.c), with explanations. His admissions to the SOR 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 a 34-year-old employee of a federal contractor. He received his associate's degree in November 2007, and his bachelor's degree in July 2010. He has a daughter, age 12, for whom he provides support. Applicant moved in with his mother to save money to pay his support obligation and his delinquent debts.

Applicant was employed full time between June 2001 and August 2005. He was unemployed between August 2005 and February 2006. He was employed between February 2006 and February 2013, and unemployed between February 2013 and October 2013. He has been employed from October 2013 to present. His current employer, a federal contractor, hired him for a full-time position in June 2016. Applicant has been working for the same employer since.

Applicant disclosed in his 2013 and 2016 SCAs that he had financial problems. Specifically, he disclosed the three delinquent accounts alleged in the SOR: a \$15,000 reconstruction loan he received after hurricane Katrina (SOR ¶ 1.a), and two delinquent credit accounts (SOR ¶¶ 1.b and 1.c), totaling over \$19,000.

Applicant explained that in August 2005, he was living with his then pregnant girlfriend. Both of them had jobs and no financial problems. In 2005, hurricane Katrina obliterated his state and he and his family lost their homes and jobs. After the passing of the hurricane, Applicant took a \$15,000 reconstruction loan to repair his family's home.

Applicant could not find a full-time job until August 2006, when he took a position where his employer paid for part of his college education. He used his limited income to pay for his living expenses and his support obligation. He used the credit cards alleged in the SOR to pay for his living expenses. Applicant lost his job in February 2013. He had been repaying his reconstruction loan, but after losing his job he could not afford to continue the loan payments. Applicant married in 2008, separated in 2010, and divorced in 2012. The expenses associated with his separation and divorce further strained his financial situation.

In 2013, Applicant found employment in the construction business, making minimum hourly wages. His income was barely sufficient to pay for his living expenses and child support. During 2013, Applicant started to apply for government positions, but he was not hired because he did not have the eligibility for a clearance. Applicant was hired by a government contractor in early 2016.

Applicant explained to the investigators during his interviews, in his SOR answer, and FORM response, that his financial problems resulted from circumstances beyond his control. He believes he has been financially responsible considering his circumstances. He noted that he paid his reconstruction loan until he lost his job in 2013. He reduced the loan debt from \$15,000 to about \$9,450. He also noted he has continued to pay his living expenses and child support even though he was unemployed or underemployed during extended periods. He claimed he has been actively involved in his daughter's care and upbringing.

Applicant highlighted that he has not incurred additional delinquent debt since he lost his job in 2013. He believes this shows he knows how to live within his financial means and that he has been financially responsible. Applicant repeatedly stated his intent to repay his financial obligations. He just did not have the income to do so.

Applicant travelled to Costa Rica in 2010 and to Mexico in 2012. He averred his ex-wife paid for the trips because she wanted them to get back together.

In 2014, Applicant received an IRS Form 1099-C (Debt Cancellation) for the account alleged in SOR ¶ 1.b. The IRS reassessed Applicant's 2014 tax liability based on the debt cancellation. (Applicant's FORM Response)

Applicant contacted the collection company of the account alleged in SOR ¶ 1.c to establish a payment plan (date unspecified). The collector informed Applicant that it could not find the account information related to him. On January 8, 2018, Applicant filed a dispute with the credit bureau asking for the account to be deleted from his credit report. (Applicant's FORM Response)

Applicant's documentary evidence shows that he made one \$110 payment to the account alleged in SOR ¶ 1.a in January 5, 2018.

Applicant described his current financial situation as stable and noted that he pays all of his current bills on time. He believes that his unpaid debts were isolated incidents that involved situations beyond his control. He promised to continue to live within his financial means and pay his debts.

Applicant's 2017 credit report shows he had a total of eight trade lines (accounts): only the three accounts alleged in the SOR were noted as being in collection. The remaining accounts were noted as "paid as agreed or closed." There are no other delinquent or collection accounts. He has not incurred any new delinquent debt. (FORM, Items 7 - 9)

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* (AG), effective 8 June 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, § 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 financial problems are documented in the record. In 2005, he lost his job and his home because of hurricane Katrina. Thereafter, he has had difficulty finding and maintaining a well-paying job because of reasons beyond his control. He accumulated a delinquent reconstruction loan and two credit accounts. 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; 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).

Applicant's financial problems are ongoing and recent. However, his financial problems could be attributed to, or were aggravated by, circumstances beyond his control – the 2005 hurricane, his 2010 separation and 2012 divorce, and his inability to find full-time employment. 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 as a whole. Applicant made payments on his 2005 reconstruction loan until he lost his job in 2013. Although he had difficulty finding full-time employment or a well-paid job, Applicant took minimum wage position to pay for his support obligations and his living expenses. The credit reports in the FORM show that only the three accounts alleged in the SOR were delinquent. The remaining accounts were noted as "paid as agreed or closed." Applicant acted responsibly under the circumstances by paying those debts he could afford to pay. There is no evidence of any financial problems or additional delinquent accounts before or after 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 three debts. He acted responsibly under the circumstances. His current financial situation is stable and he promised to continue to live within his financial means and to pay all of his debts. He received an IRS Form 1099-C (Debt Cancellation) for the account alleged in SOR ¶ 1.b. He has a reasonable basis to dispute the account alleged in SOR ¶ 1.c. And he made a recent payment on the account alleged in SOR ¶ 1.a. I find that there are clear indications that his financial problem is being resolved and is under control.

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 34-year-old employee of a federal contractor. 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. Applicant is aware that he has to maintain financial responsibility to be eligible for a clearance. Applicant promised to continue to resolve his financial problems. 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

Subparagraphs 1.a - 1.c: For Applicant

Conclusion

In light of all the circumstances, 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