



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



In the matter of:)
)
) ISCR Case No. 18-00362
)
Applicant for Security Clearance)

Appearances

For Government: Dave F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2018

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 December 6, 2016. He was interviewed by a government investigator on July 6, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on March 9, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on April 1, 2018, 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), containing the evidence supporting the security concerns, was provided to Applicant by letter dated April 30, 2018. Applicant received the FORM on May 13, 2018. He was granted a period of 30 days after receipt of the FORM 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 July 26, 2018. Absent any objections, I admitted and considered the Government's proposed evidence.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of interview with a government background investigator on July 6, 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. I admitted the FORM's proffered evidence and considered it.

Findings of Fact

In his SOR answer, Applicant admitted the seven SOR financial allegations (§§ 1.a through 1.g). He also 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 44 years old. He graduated from high school in 1993. He married in 1998, and has four children ages, 21, 19, 15, and 8. A federal contractor hired Applicant as a truck driver in December 2015, and is sponsoring his clearance. This is Applicant's first SCA.

In response to Section 26 (Financial Record) of his 2016 SCA, Applicant disclosed he had financial problems caused by sporadic employment and mechanical breakdowns of his truck. He stated that he defaulted on a motorcycle loan, and had filed for Chapter 13 Bankruptcy to prevent the foreclosure of his home in October 2012. The bankruptcy was dismissed in January 2017, because of lack of payments.

Applicant explained to the government investigator during his July 2017 interview (FORM, Item 3) that his financial problems resulted from a number of factors including, his medical problems (no documentary evidence presented), his truck having two expensive mechanical breakdowns, and the lack of work, all of which prevented him from working. Additionally, Applicant noted that as a truck driver, he was always on the road and delegated to his wife the responsibility of managing their finances and paying the bills. According to Applicant, his wife failed to manage their finances properly and she had failed to pay the mortgage and other accounts as required.

Applicant stated that he had not made any mortgage payments since December 2016, and his salary was garnished twice by creditors. When asked about his current financial situation, Applicant indicated that it was not good, that he was not capable of

meeting his financial obligations because of his unstable employment situation. His unsteady income was insufficient to pay for his living expenses and accumulated debts. He used his credit to pay for his living expenses. He was unable to pay his credit cards and some of his consumer debts, which became delinquent.

Applicant has filed for bankruptcy four times: in March 2003 (discharged in September 2007); in January 2009 (dismissed in September 2012); in October 2012 (dismissed in January 2017); and in July 2017 (outcome unknown). The 2009 and 2012 bankruptcies were dismissed because of lack of payments. Applicant admitted the debts alleged in SOR ¶¶ 1.e, 1.f, and 1.g. He presented no documentary evidence of any contacts with creditors, payments made, or payment agreements established concerning these SOR debts. Applicant stated has not been able to address these debts because of his lack of employment. He promised to address these SOR debts as soon as he gets steady employment.

Applicant presented no evidence concerning his current financial situation (monthly income, living expenses, and debt payments). He stated during his 2017 interview that he had not participated in financial counseling and does not have a working budget.

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 has been unemployed or underemployed apparently for a significant period. He has been unable to address his financial obligations and filed for bankruptcy protection in 2003, 2009, 2012, and 2017. The 2009 and 2012 bankruptcies were dismissed because of lack of payments. 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 condition under AG ¶ 20 is 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.

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).

The AG ¶ 20(b) financial considerations mitigating condition is not fully raised by the facts in this case and does not mitigate the security concerns. Applicant's financial problems started before 2003, and are ongoing and unresolved. Applicant's financial problems could be attributed to his medical problems, unemployment, and underemployment. Notwithstanding, he failed to submit documentary evidence of his medical problems. More importantly, he did not present sufficient evidence of good-faith efforts to pay his debts or that he has been financially responsible under his circumstances.

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, 44, has been employed with federal contractors since 2015. This is his first SCA. 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.g:	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