



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



In the matter of:)
)
) ISCR Case No. 14-03286
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to file his state income tax return for tax year 2011, and owes an unspecified debt to the state. He has child support arrearages of around \$36,000 that is being paid through wage withholding, and had his mortgage foreclosed in 2011. His evidence is insufficient to show that he has a track record of financial responsibility, that he does not have a current financial problem, or that his financial problem is being resolved or is under control. He failed to mitigate the Guideline F security concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 23, 2014. On September 12, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on October 17, 2014, and elected to have his case decided on the written record.

¹ DOD acted 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 *Adjudicative Guidelines*

A copy of the Government's file of relevant material (FORM), dated March 31, 2015, was provided to him by transmittal letter dated May 14, 2015. Applicant was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. As of July 30, 2015, Applicant had not responded to the FORM or submitted any information. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 4, 2015.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. His admissions are incorporated herein as a finding of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 43-year-old technician employed by a government contractor. He served on active duty in the U.S. Navy from 1990 until 1996, when he was honorably discharged. He then served in the Navy Reserve from 1998 until 2002. He attended college during 1998 – 1999, 2004 – 2005, and in 2008, but did not receive a degree. He married his first spouse in 1992 and divorced in 1997. He married his second spouse in 1997, and divorced in 2010. He has three children ages 19, 20, and 21.

According to Applicant's 2014 SCA, the DOD granted him eligibility for a secret clearance in 1998. It is not clear from the information provided whether Applicant has possessed a clearance since then. His employment record shows that from 1997 to 2005, and from 2011 to 2012, he worked for private companies. He worked for a government contractor from 2005 to 2011, and he has worked for his current employer, a government contractor from 2011 to present.

Applicant disclosed in Section 26 (Financial History) of the 2014 SCA that he failed to file his state income tax return for tax year 2011 (SOR ¶ 1.a). He explained that he filed his federal income tax return, but forgot to file the state income tax return. He believes he owed \$400; however, the state is claiming a \$1,500 tax deficiency. Applicant stated in his 2014 SCA that he was going to contact the state to ascertain the extent of his tax debt and make arrangements to pay it.

In his answer to the 2014 SOR, Applicant claimed that he was in the process of working with a state collection agency to file an amended 2011 income tax return and then he intended to make arrangements to pay the tax debt. He presented no documentary evidence to support his claims. I note that the January 28, 2014 credit report included in the FORM shows that the state released a tax lien in October 2011, presumably after it was paid or Applicant established a payment plan. Applicant's pay statement also shows that the state is withholding \$157 monthly from his earnings for tax purposes.

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant disclosed in his 2014 SOR that he was \$53,000 in arrears on his child support obligation. (SOR ¶ 1.b) He explained that when his youngest child turned 18, he was in arrears for a small amount of money, and the state ordered an audit on the account. The divorce order required Applicant to pay \$800 or 25% of his monthly income in child support, whichever was greater. Applicant claimed he paid \$800 a month, but failed to increase his child support payments to meet the 25% a month required by the court order. Because of his salary increases, the court determined that he owed \$36,000 in child support. In August 2012, the court ordered the withholding of \$650 monthly from Applicant salary. Applicant's October 2014 pay statement shows that \$650 was withheld that month.

Applicant also disclosed that in around 2009, he became delinquent on his mortgage payment because of divorce-related expenses and child support obligations. (SOR ¶ 1.c) He averred that his earnings were insufficient to pay his mortgage, debts, and living expenses. His home was foreclosed in 2011. The total loan balance was \$112,000, and the mortgage was \$6,000 past due. In his answer to the SOR, Applicant claimed that part of the foreclosure agreement established when he returned the property, "all balances were supposed to be zeroed." Applicant averred that he contacted the creditor to resolve the debt, but received no response. Applicant documented that he disputed the debt through the credit bureau in October 2014. He presented no evidence to show the legal basis for the dispute or whether it was resolved on his favor.

Applicant disclosed in his 2014 SCA four delinquent credit card debts. The FORM credit reports show these accounts were paid. Additionally, the 2014 SOR alleged two service providers' delinquent accounts (SOR ¶¶ 1.d and 1.e). Applicant initially disputed the debts, but later paid them both in July 2014.

Applicant's gross monthly pay is around \$5,000, with a net income of \$3,383. Except for his earnings, he provided little information about his financial situation. He did not provide any information about his monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget. The 2015 credit report shows numerous accounts in good standing and several accounts paid after being delinquent or charged off. It also shows the delinquent mortgage alleged in the SOR (which is being disputed), one unpaid credit card debt that was sold to another debt collector, and an unpaid \$10 medical debt.

Policies

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 lists 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 AG ¶ 2(a). 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; AG ¶ 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

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18)

Applicant’s failure to timely file his state income tax return, and his delinquent or in collection accounts raise the applicability of the following financial considerations disqualifying conditions: AG ¶ 19(a) “inability or unwillingness to satisfy debts,” AG ¶ 19(c) “a history of not meeting financial obligations,” and AG ¶ (g) “failure to file annual

federal, state, or local income tax returns as required or the fraudulent filing of the same.”

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

(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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

None of the financial considerations mitigating conditions fully apply and do not mitigate the security concerns. Applicant’s financial problems are ongoing. Applicant claimed he forgot to file his 2011 state taxes, that he was in the process of refiling his 2011 state income tax return, and that he intended to make payment arrangements. He presented no documentary evidence to show that he filed his 2011 income tax return, the extent of his debt, or that he has paid or made arrangements to pay the delinquent taxes.

Concerning SOR ¶ 1.b, Applicant’s documents show that his child support obligation was modified in 2012 from \$800 to \$650 monthly, because one child became 18 years old. He averred that he was \$36,360 in arrears because he was paying only \$800 monthly, instead of 25% of his monthly income. Applicant failed to submit documentary evidence to show that he was paying his child support obligation consistently before 2012.

Concerning SOR ¶ 1.c, Applicant averred that he became delinquent on the mortgage because of his divorce, which could establish circumstances beyond his control. Notwithstanding, Applicant failed to present sufficient evidence to show that he was financially responsible under the circumstances. Applicant presented no

documentary evidence of any efforts to resolve this debt, or to show that he was released of any financial obligation after the property was foreclosed. It is not clear from the document he submitted attached to his answer to the SOR whether the online dispute pertains to the mortgage foreclosure.

Furthermore, Applicant provided little information about his current earnings and financial position, except for his pay statement. He did not provide any information about his monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to show that he participated in financial counseling or that he follows a budget. The available information is insufficient to establish clear indications that he does not have a current financial problem.

I considered that Applicant's 2015 credit report shows numerous accounts in good standing and several accounts paid after being delinquent or charged off. It also shows the delinquent mortgage alleged in the SOR, one unpaid credit card debt that was sold to another debt collector, and an unpaid \$10 medical debt. On balance, I find that Applicant presented insufficient information to establish that his financial problem is being resolved, or 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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant failed to submit evidence to show that he has a track record of financial responsibility, that he does not have a financial problem, or that his financial problem is being resolved or is under control. He failed to mitigate the Guideline F security concerns.

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
Subparagraphs 1.d and 1.e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge