



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



In the matter of:)
)
) ISCR Case No. 15-00318
)
Applicant for Security Clearance)

Appearances

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

02/29/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to show that he has a track record of financial responsibility and that his financial problems are 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 July 9, 2012. On June 19, 2015, 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 September 28, 2015, and elected to have his case decided on the written record, in lieu of a hearing.

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

A copy of the Government's file of relevant material (FORM), dated November 9, 2015, was provided to him by transmittal letter that same day. Applicant received the FORM on November 19, 2015. He was allowed 30 days to respond to the FORM and submit any objections, corrections, and to provide material in extenuation and mitigation. Applicant did not respond to the FORM or submit any information. The case was assigned to me on February 23, 2013.

Findings of Fact

Applicant admitted all the factual allegations in the SOR (with explanations), except for SOR ¶ 1.k, which he denied (because he did not recognize the creditor). His admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 53-year-old employee of a federal contractor. He graduated from high school in 1981. He enlisted in the U.S. Navy in 1988, where he served until his honorable discharge in 1998. While in the Navy, he attended college through a distance learning program, and received his bachelor's degree in 1991 and a master's degree in 1998. Applicant married his wife in July 1988. He has two children, ages 27 and 22.

Applicant's employment record shows that after his discharge he worked as senior engineer for a large federal contractor from 1998 to 2005. He was hired by his current employer, another large federal contractor, in 2005. As of 2012, he was the company's director of information technology.

Section 26 (Financial Record) of the 2012 SCA asked Applicant to disclose whether he had any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; and whether he was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts during the last seven years. Applicant answered "yes" and disclosed some of the delinquent accounts alleged in the SOR.

Applicant explained that his wife's business fell apart during the housing market collapse (around 2007-2009), and without her income, they could not afford to pay their financial obligations and their living expenses. Applicant stated that they were in too much debt. They tried to make ends meet, but were unsuccessful, and many of the accounts were charged off. He indicated that he had taken no action to resolve his financial problems. He explained that his home was foreclosed because they could not make the mortgage payments, and the bank was unwilling to work with them. Concerning his current financial status (as of 2012), he indicated that he was still in debt, but starting to get back on his feet and trying to make amends.

The subsequent security clearance background investigation revealed the 11 delinquent accounts alleged in the SOR, totaling about \$348,536. The SOR allegations are established by Applicant's admissions and the FORM credit reports.

In his answer to the SOR, Applicant claimed that SOR ¶¶ 1.a and 1.h alleged the same account. A review of the credit reports in evidence support his position. Thus, SOR ¶¶ 1.a and 1.h will be consolidated under SOR ¶ 1.a. Applicant claimed that he had tried numerous times to reach the creditor, but received no response. Applicant presented no documentary evidence of any efforts to contact this creditor or of any payments made.

In his answer to the SOR, Applicant admitted the accounts alleged in SOR ¶¶ 1.b, 1.e, 1.f, 1.g, 1.i, 1.j, and 1.l. He claimed that he had paid off all of these accounts, but presented no documentary evidence of any efforts to contact the creditors, payment plans established, or of any payments made. The FORM credit reports do not support his claims that he paid the accounts. On the contrary, the credit reports show the debts as delinquent or charged off.

Concerning the delinquent mortgage alleged in SOR ¶ 1.c, Applicant admitted this was his mortgage and claimed the mortgage was forgiven in 2014. The FORM credit reports (the most recent from November 2015) show that the “foreclosure process started.” However, there is no evidence to show that the property was sold and that the proceeds of the foreclosure satisfied the debt, or that Applicant was released of financial responsibility. Applicant presented no documentary evidence to support his claim that the mortgage was forgiven.

Regarding SOR ¶ 1.d, Applicant admitted this was his delinquent credit card account and claimed that he was working with the creditor to repay the debt. He presented no documentary evidence to support his claim. Applicant denied the account alleged in SOR ¶ 1.k, and indicated that he did not know “what this is.” The account is established by the 2012 credit report; however, it is not reflected on the 2014 and 2015 credit reports. Applicant submitted no documentary evidence to show that he investigated the debt and disputed it. I note that the credit reports show Applicant paid a \$1,050 judgment in May 2010, and that he has many accounts in good standing.

Applicant provided no information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget. Although he claimed in his answer to the SOR that he had resolved or was in the process of resolving most of the delinquent accounts, he presented no documentary evidence of debts paid, payment agreements made, of efforts to contact creditors, or of efforts to otherwise resolve his financial problems.

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 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 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)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant has a history of unresolved financial problems that date back to 2007-2009. His financial problems raise the applicability of the following financial considerations disqualifying conditions: AG ¶ 19(a) "inability or unwillingness to satisfy debts," and AG ¶ 19(c) "a history of not meeting financial obligations."

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. Applicant's financial problems are ongoing, and he presented insufficient evidence to show his debts were incurred under circumstances unlikely to recur.

Applicant's presented insufficient evidence of periods of unemployment, underemployment, or of other facts that could establish circumstances beyond his control that may have contributed or aggravated his financial problems. Applicant averred, in general terms, that his financial problems resulted from his wife's failed business during the downturn of the real estate market. However, he presented no evidence to show how they acquired their debts, why they became delinquent, and what efforts they took to try to resolve their debts.

Applicant's financial problems date back to 2007-2009. He submitted his SCA in 2012, indicating that he was trying to resolve his financial problems. He was issued the SOR in June 2015 and the FORM in November 2015. Notwithstanding, Applicant failed to submit documentary evidence to show his efforts to contact creditors, establish payment plans, or of any payments made to resolve his delinquent debts.

In sum, Applicant did not submit sufficient evidence to show he acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). He presented insufficient evidence to show that he initiated good-faith effort to repay overdue creditors or otherwise resolve his debts.

Furthermore, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current 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, or that his financial problem is being resolved, or is under control. Applicant failed to establish that he has a track record of financial responsibility.

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 Guidelines F in my whole-person analysis.

Applicant receives credit for his years of service in the Navy and his years working for federal contractors. Notwithstanding, he failed to submit sufficient evidence to show that he has a track record of financial responsibility. 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.h and 1.k:	For Applicant
Subparagraphs 1.a-1.g, 1.i, 1.j, and 1.l:	Against 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