



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



In the matter of:)
)
) ISCR Case No. 14-03413
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., and Candace Garcia, Esq.,
Department Counsel
For Applicant: *Pro se*

11/15/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is a 45-year-old armed security guard employed by a federal contractor. His financial problems were caused by circumstances beyond his control. He established financial responsibility by addressing his legal obligations commensurate with his financial means. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 26, 2014. On December 22, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on February 2, 2015, and requested a decision based on the record in lieu of a hearing. On June 22, 2015, Applicant

¹ The 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.

requested a hearing before an administrative judge. (Appellate Exhibit 1) The case was assigned to me on July 15, 2015. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on July 15, 2015, scheduling a hearing for July 17, 2015.

At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified and submitted 14 exhibits, marked AE 1 through 14. AE 14 was received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on July 27, 2015.

Procedural Issues

Applicant requested an expedited hearing. At his hearing, Applicant stated that he had sufficient time to prepare, was ready to proceed, and affirmatively waived his right to 15 days advanced notice of his hearing. (Tr. 12-14)

Findings of Fact

In his answer to the SOR, and at his hearing, Applicant admitted all of the SOR factual allegations. After a thorough review of the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 45-year-old armed security guard. He graduated from high school in 1988, and enlisted in the U.S. Army in April 1989. He served on active duty from 1989 until July 1998. He achieved the rank of E-5, and was separated with an under other than honorable conditions discharge. Applicant explained that he received the other than honorable discharge because he was convicted for driving while intoxicated. He has completed some vocational and technical schools.

Applicant married his first wife in 1989, and divorced in 1997. He married his second wife in 1997, and divorced in 2002. He has five children, two of them are adults from his first marriage, and three are from his current relationship (six-year-old twins, and a seven year old). He has been cohabitating with his current partner since April 2005.

Applicant was hired by his current employer, a federal contractor, in February 2013. Between 2000 and 2008, Applicant worked part-time as a telecommunications technician for a local union. He also worked part-time as an armed security guard for different companies between 2007 and 2013. He testified that since leaving the Army, he has always worked two jobs, usually a full-time job and a part-time job.

Applicant disclosed in his 2014 SCA (Section 26 – Financial Record) that he had financial problems that included a mortgage foreclosure, tax debts to his state and the IRS, and that he was in arrears in his child support obligations.

The background investigation addressed Applicant's financial problems and revealed the delinquent accounts alleged in the SOR, which are established by the

Government's evidence and by Applicant's testimony. Concerning his student loans, totaling close to \$18,000 (alleged under SOR ¶¶ 1.a and 1.c), Applicant explained that he was unable to make payments because he was underemployed and not making enough money to pay his living expenses and his debts. He made some payments on his student loans before he was issued the SOR.

In April-May 2015, Applicant consolidated his student loans and they are now in forbearance. (AE 3, AE 14, and documents attached to his answer to the SOR) Applicant established a payment plan in which he agreed to pay \$140 a month. Applicant intends to resolve his tax debts first and then he promised to fully address his student loan debt. (Tr. 55-56)

Applicant became delinquent on his child support obligation for his two older children (SOR ¶ 1.b) when he was discharged from the service in 1998. Applicant averred that he was making payments with a debit card, but the state would take so long to process the payment that by the time they acted the debit card sometimes did not have sufficient funds to cover the debt. The state rejected his debit card payments and he accumulated the debt. The state then established a \$75 involuntary wage garnishment against Applicant. Applicant's documentary evidence shows that he has been paying his child support arrearages from January 2008 to present. As of his hearing, he had reduced his debt from close to \$13,000 to \$1,600.

SOR ¶¶ 1.d and 1.e allege that Applicant owes his state \$8,375 in past-due taxes for tax years 2011 and 2012. Applicant explained that he timely filed his income tax returns, but he had too many deductions and not enough money was withheld from his earnings to pay the taxes. Additionally, he won a \$10,000 award from a discrimination suit against an employer. The award was considered income, and he was required to pay taxes on the \$10,000. He used the award money to move his family after his home mortgage was foreclosed, and acquired the income tax debt.

Applicant's documentary evidence shows that he made payments to the state in October, November, and December 2011 (\$531); January and June 2012 (\$332); and March, April, and November 2014 (\$1,449). In March 2015, Applicant established a payment plan with the state in which he agreed to pay \$157 a month until his debt is satisfied. His initial debt was \$8,375. He paid \$3,546, and his remaining debt is \$4,476.

Applicant disclosed that he also owes the IRS \$752 for tax year 2013. According to the IRS document he submitted, Applicant made some mistakes in his 2013 income tax return. In 2015, the IRS notified Applicant that they corrected his tax return to reflect the deficiency and interest due, and demanded its payment. He established a payment plan with the IRS to address this debt. This debt was not alleged in the SOR.

In 2008, Applicant purchased a home. After losing his full-time job, he was unable to make the mortgage payments and the lender foreclosed on the mortgage in 2011. (SOR ¶ 1.f) Applicant believes that he owes no deficiency resulting from this

foreclosure. The Government's credit reports do not show that Applicant owes any money resulting from the foreclosure.

Applicant believes that he is a responsible person. After he was discharged from the service, he worked full-time as a telecommunications technician, and he had a part-time job as an armed guard. Applicant developed financial problems between 2008 and 2012. In 2008, he lost his full-time job and started to work two part-time jobs. However, even with the two part-time jobs earnings, he was making only about \$30,000 a year. His earnings were insufficient to pay his living expenses, his child support obligations, and his debts.

Applicant started working full-time in 2012. Since then, he has been trying to resolve his financial problems. He is currently working two full-time jobs, making about \$50,000 annually, to pay his debts. In addition to the debts alleged in the SOR, Applicant disclosed that he has two current credit card debts, one owing \$10,000 and the second owing \$600. Applicant acknowledged that he owes too much on the credit cards, but averred that he is working to bring the debt down.

Applicant expressed remorse for his financial situation and accepted responsibility for his financial problems. He believes that he has been truthful and forthcoming during the security clearance process. He is considered to be a valuable employee who displays a positive attitude and fulfills his duties and responsibilities with little or no supervision. He is considered to be reliable and dependable. Applicant's supervisor supports his eligibility for a security clearance.

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)

Applicant has a history of financial problems that include a state tax debt from tax years 2011-2012, a home mortgage foreclosed in 2011; delinquent student loans; and \$1,600 in past-due child support. Financial considerations disqualifying conditions AG ¶ 19(a): “inability or unwillingness to satisfy debts,” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

AG ¶ 20 lists 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing.

AG ¶ 20(b) applies. Applicant's financial problems were, in part, the result of his divorce, his periods of underemployment, and that he was the sole provider for his current family and provided support for his older children. Applicant's underemployment and divorce could be considered as circumstances beyond his control that contributed or aggravated his financial problems.

Considering the evidence as a whole, I find Applicant has shown sufficient financial responsibility for AG ¶ 20(b) to apply. Applicant's financial problems appear to be related to his discharge from the service, divorce, and to the period between 2008 and 2012, when Applicant lost his full-time job and was working two part-time jobs. After he found a full-time job in 2012, Applicant started to address his delinquent debts. Applicant's evidence shows that he made payments toward his delinquent debts commensurate with his income at the time.

Although Applicant should have been more responsible addressing his child support obligations, the evidence shows that he has been paying his arrearages from 2008 to present. He substantially reduced his obligation from \$13,000 to \$1,600. He also established that he started paying his past-due state tax debt before receiving the SOR. He recently established a payment plan with his state and the IRS to resolve his tax debts.

Applicant's financial problems are under control. He has taken two full-time jobs, and his current earnings allow him to establish viable payment plans to address his delinquencies. The credit reports in evidence show that he is not living beyond his means, and he has no new delinquent debts. Considering the evidence as a whole, Applicant has shown financial responsibility and sufficient progress in the resolution of his debts.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 45-year-old armed security guard working for federal contractors since 2012. His financial problems were caused by circumstances beyond his control. He established financial responsibility by addressing his legal obligations commensurate with his financial means.

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.f: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge