



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



In the matter of:)
)
) ISCR Case No. 15-00544
)
Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s finances were adversely affected by circumstances beyond his control. He resolved four SOR debts, and has two SOR debts left to resolve. While additional sustained financial effort is necessary to resolve all his debts, he has established a track record of debt payment and resolution. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on May 18, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant’s eligibility for a clearance. On August 15, 2015, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on September 9, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

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.

The case was assigned to me on December 2, 2015. The DOHA issued a notice of hearing on December 4, 2015, scheduling the hearing for December 23, 2015. Applicant's hearing was held as scheduled. Government exhibits (GE) 1 through 5, and Applicant exhibits (AE) 1 through 10, were admitted into evidence without objection. On December 29, 2015, DOHA received the transcript of the hearing. Applicant provided two additional documents after his hearing, and they were admitted without objection. (AE 11, 12)

Findings of Fact

Applicant admitted all the SOR factual allegations, with explanations, and provided extenuating and mitigating information. His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a federal contractor. He enlisted in the U.S. Army in 1978, and honorably served until his retirement in 2000. He retired with the rank of sergeant first class (E-7). Applicant attended college and received an associate's degree in 1992. He married in 1979 and divorced in 1987. He married in 1987 and divorced in 1992. He married in 1999 and divorced in 2008. He has a 32-year-old son from his first marriage.

Applicant held a secret level security clearance during his service, which was continued to present. He has worked for two federal contractors since he retired from the service. He worked for a federal contractor from 2000 to 2008. He has been working for his current employer since 2008. Applicant's continued employment is contingent on his retaining his eligibility to possess a security clearance. There are no allegations and there is no evidence of any rule or security violations, except for the SOR allegations.

Section 26 (Financial Record) of the 2012 SCA asked Applicant to disclose whether during the last seven years 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.

Applicant answered "yes" and disclosed all the debts alleged in the SOR, totaling about \$32,000. His credit reports and his SOR and hearing admissions established the debts in the SOR. The status of his SOR debts is as follows:

SOR ¶ 1.a (\$1,234) This credit card account became delinquent in 2010 as a result of his divorce. He hired a debt management company in 2010 to help him resolve four delinquent debts, totaling approximately \$12,000. Applicant started depositing \$428 monthly with the debt management company for them to pay his creditors. His documents show a history of making consistent monthly deposits of \$428 to the debt management company from June 2014 to August 2015. (See documents attached to SOR answer.) Two of the delinquent accounts included in the debt management

program were SOR ¶¶ 1.a and 1.c. Applicant paid the debts alleged in SOR ¶¶ 1.a and 1.c in September 2015. After paying three of the accounts in the debt management program, he reduced the monthly deposit to \$230. In September 2015, he also scheduled a \$945 payment to another creditor to pay off a delinquent credit card account. (See documents attached to SOR answer.)

SOR ¶ 1.b (\$794, with an alleged total balance of \$10,600) This was Applicant's credit card account that he and his wife used for travel and routine expenses. It became delinquent in November 2013. Applicant has been making payments on this account since December 2013, albeit inconsistently and for less than the minimum payment due. He explained he could not afford to make the minimum payments due. He paid \$800 in August 2015 and \$600 in September 2015, to bring the account current. He also established an allotment payment plan starting in August 2015. His January 2016 account summary shows that he is current with his payments. His current balance is \$8,490.

SOR ¶ 1.c (\$3,063) This was a delinquent consumer account credit card that became delinquent in November 2011. Applicant included this debt on his debt consolidation payment program. (AE 4) In September 2015, he asked the debt management company to increase the payments to this creditor from \$160 to \$200.

SOR ¶ 1.d (\$6,649 was alleged in the SOR. However, the collection company account statement indicates that as of July 2015, the balance was \$7,370) Applicant admitted that this was his delinquent consumer account credit card. Applicant claimed that he was making payments on this account, but missed some payments in January 2015, and the account became delinquent. In March-April 2015, the creditor obtained two salary offsets against Applicant's retired pay account to recover \$880. Applicant made a \$1,000 payment in December 2015 (AE 12), and scheduled another \$1,000 payment to take place in January 2016. At his hearing, Applicant promised to make more lump sum payments to this creditor and to establish a payment plan. He presented no evidence to show he established a payment plan or that he made any additional payments.

Concerning SOR ¶ 1.e (\$5,990) and ¶ 1.f (\$4,631), Applicant explained that these were his son's accounts that he cosigned. SOR ¶ 1.e was a loan to purchase a motorcycle. Applicant claimed he was not aware they were delinquent until he saw the credit report. At his hearing, Applicant promised to talk to his son and obtain information about his record of payments on these debts. He failed to present any documentary evidence of any payments made by his son or him on these two accounts. Applicant promised to contact both creditors to determine what arrangements he could make to resolve the debts. He presented no evidence of any payments made or contacts with the creditors.

Applicant explained that his financial problems were caused by his 2009 divorce, high interest credit cards, and a \$33,000 reduction in pay from 2010 to 2015. After the 2009 divorce, he was left with most of the marital debts. He sold the marital home and

used the proceeds of the sale to pay some of his debts. Since 2009, he has been renting an apartment and reducing his expenses to be able to pay his debts.

Applicant contracted the services of a debt management company in 2010 to help him resolve his debts. Apparently, that company was purchased by another debt management company in 2011. He implied that during the companies' restructuring process, some of his debts in the debt management schedule were not paid by the company, and they were charged off.

Applicant's documents show that his yearly salary in 2010 was over \$108,000. After his employer lost its contract, Applicant's yearly salary was reduced. His 2011 W-2 Form shows wages of \$102,427, and his 2014 W-2 Form show a wages reduction to \$71,354. (See documents attached to the SOR answer; Tr. 33-34) As of July 2015, his salary was increased to \$83,640. (AE 9) Applicant believes that he is currently financially stable. He believes that he has finally begun his financial recovery and that he is in control of his finances. He has a 401(k) retirement plan with about \$360,000 in it. As a last resort, he plans to withdraw money from his 401(k) plan to pay his delinquent debts. But he would prefer not to do so because of the early withdrawal tax penalties.

Applicant and his ex-wife owned four timeshare properties while married. After the divorce, they split the timeshares, two each. He intends to sell his two timeshares and use the proceeds to pay his debts. Applicant testified that he has approximately \$1,000 in his savings account and \$5,000 in his checking account. He claimed that after paying his monthly expenses he has a net remainder of about \$2,000. He is using his surplus income to pay his debts.

When asked whether he has acquired any recent large financial obligations, Applicant disclosed that in November 2014, he was involved in a car accident and totaled his car. In January 2015, he purchased a 2012 car for about \$22,000. He also disclosed he owes the IRS about \$11,000 for tax year 2013. He claimed he timely filed his income tax return, but did not have the money to pay the tax. He also claimed that he has a \$165 monthly payment plan established with the IRS. He failed to submit documentary evidence to corroborate his claims.

Applicant's most recent vacation trip was in 2015 to Cancun. He claimed his trip expenses were paid by the crew ship company because he worked during the cruise as a line dancing instructor.

Applicant expressed sincere remorse and embarrassment for his financial problems. He noted that he has been managing his financial situation and has brought his debt down. He believes he is back in control of his finances, and plans to pay all his creditors. He stated that he was looking for another job to increase his earning and pay his debts sooner.

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

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's history of financial problems is documented in his credit reports, SOR response, and hearing record. The evidence establishes the six delinquent debts alleged in the SOR. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) 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), 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.

AG ¶¶ 20(a) through 20(d) apply. Applicant's finances were adversely affected by circumstances beyond his control – his 2009 divorce, and his reduction in wages from \$108,000 in 2010 to \$71,000 in 2014, and to \$83,000 in 2015.

In 2010, Applicant sought the assistance of a debt consolidation company to help him pay four delinquent debts, including SOR ¶¶ 1.a and 1.c. He also paid two non-SOR creditors. Applicant has resolved four of the SOR debts (SOR ¶¶ 1.a through 1.d).

SOR ¶¶ 1.e and 1.f are unresolved. Applicant cosigned two loans for his son that his son failed to pay. Applicant plans to have his son resolve both debts. If he is unable to do so, Applicant promised to make payments on the debts.

Based on Applicant's actions addressing and paying his debts, and his credible and sincere promise to timely pay his debts, future delinquent debt is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. I find there are clear indications that his financial problem is being resolved or is under control. His payments of some of his debts showed good faith. He has sufficient income to keep his debts in current status and to continue making progress paying his remaining delinquent debts. His efforts are sufficient to fully mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, he mitigated security concerns under the whole-person concept, *infra*.

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 Guideline F, but some warrant additional comment.

Applicant is a 57-year-old employee of a federal contractor. He honorably served 22 years in the Army until he retired as a sergeant first class in 2000. During most of his service, he held a security clearance. Applicant has worked for two federal contractors, and held a security clearance, since his retirement to present. There are no allegations of rule or security violations.

The SOR alleged six delinquent debts. Applicant showed financial responsibility when he included two of the SOR debts (SOR ¶¶ 1.a and 1.c) in a debt consolidation program that he started in 2010 to pay four delinquent debts (two were not alleged in the SOR). Three of the SOR debts (SOR ¶¶ 1.a through 1.c) and two that were not alleged, have been paid or resolved. SOR ¶ 1.d is current, and Applicant is in contact with the creditor to establish a payment plan. I find that he has resolved four SOR debts. He still has two SOR debts to resolve.

Applicant's finances were adversely affected by circumstances beyond his control - his divorce and a close to \$35,000 reduction in pay from 2010 to 2015. He promised to pay or resolve the remaining two unpaid SOR debts. He understands that he needs to pay his debts, and that he is required to demonstrate financial responsibility to retain his security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

[T]he concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a “meaningful track record” of debt re-payment, and I am confident he will maintain his financial responsibility.² 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.f:	For Applicant

²The Government has the option of following-up with more questions about Applicant’s finances. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [the applicant] the opportunity to have a security clearance while [the applicant] works on [his or] her financial problems.”). This footnote does not imply that this decision to grant Applicant’s security clearance is conditional.

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

JUAN J. RIVERA
Administrative Judge