



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-03474
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/02/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems arose from circumstances beyond his control and are not indicative of his judgment and reliability. Although he is still repaying his debts, he has not incurred any new liabilities, he has made payments as his means have allowed, and he is now engaged in a structured repayment of his total debt through a recently-approved Chapter 13 bankruptcy petition. He has sufficient income to complete the Chapter 13 plan with enough remaining each month to avoid such financial difficulties in the future. His request for a security clearance is granted.

Statement of the Case

On March 7, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to classified information required for her work as a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not

determine that it is clearly consistent with the national interest for Applicant to hold a security clearance.¹ On October 7, 2014, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and initially asked for a determination without a hearing. However, on November 19, 2014, he asked that his case be processed for hearing, and it was assigned to me the next day. I convened a hearing on December 16, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 3.³ Applicant testified and proffered Applicant's Exhibits (Ax.) A - AA, and I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on February 18, 2015, when I received Ax. CC - EE. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 2, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$46,527 for four delinquent or past-due debts (SOR 1.a - 1.d). Applicant admitted each of the allegations and provided detailed information about his finances and the status of each debt at the time of his response. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 41 years old and is employed as an information systems architect and consultant. In 1998, he earned a bachelor's degree in finance. In 2002, he earned a master's degree in information systems management. Since 2006, he has worked exclusively with an internationally-known business solutions product being employed by various Government agencies, including most recently a defense contractor for whom he has worked since December 2013. Applicant also served on active duty in the U.S. Army from June 1991 until June 1997, and was in the Army Reserve until June 1999, when he was honorably discharged. He held a security clearance in the Army, and has held either an industrial clearance or position of trust since about 2002. (Gx. 1; Ax. R - S; Tr. 9, 59 - 60)

Applicant married in September 1999, but the marriage ended by divorce in April 2003. He has one child, now age 14, for whom he was ordered to pay \$560 a month in support. He also was required to provide health care for his ex-wife and his child at a rate of at least \$500 a month. During periods of unemployment, health care costs increased to around \$1,000 through continued coverage programs. In 2004, he fathered

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ A list of the Government's exhibits is included in the record as Hearing Exhibit (Hx.) 1.

another child, for whom he has also been providing monthly support payments and health care. (Answer; Gx. 1; Gx. 3; Ax. A; Ax. Y; Tr. 65 - 66)

Applicant was steadily employed until 2011, when he was laid off from a job he had held for over five years. For the next two years, he was employed through a series of temporary contract positions that paid well but offered no employer-sponsored benefits. He was also unemployed at least four times for two and three months at a time. As a result, he struggled to pay his mortgage, child support, and health care premiums. At times, he used credit cards to meet his regular obligations. The debt at SOR 1.a is for a \$20,000 signature loan he used to pay off a credit card. However, he fell behind and missed three monthly payments. The debt was referred to a law firm for collection and is now the subject of a civil judgment against Applicant. He has made irregular payments to the current creditor as his means permit. (Answer; Gx. 1 - 3; Ax. BB; Ax. DD; Tr. 60 - 65)

The debts at SOR 1.c - 1.d are for other credit cards Applicant used between 2011 and 2013. He also made payments, albeit irregularly, on those accounts before he was hired for his current job. (Answer; Gx. 2; Gx. 3; Tr. 18, 70, 74)

In 2012, Applicant filed a civil suit against his ex-wife over the status of their child visitation agreement. He also sought to adjust his child support obligations to conform to state guidelines based on his reduced income. His legal fees were substantial and prevented him from making any significant progress on his credit card debts. Additionally, the suit resulted in a significant increase in his child support obligations. Applicant is adamant that his attorney did not represent his interests properly, and that he had no choice but to agree to the new payment plan. (Answer; Gx. 3; Ax. A; Ax. H - O; Ax. Z)

In March 2013, Applicant was hit by a motor vehicle while crossing the street. His medical benefits at the time covered only 80% of his hospitalization, orthopedic surgery, and subsequent rehabilitation. Applicant was able to pay the remaining costs of his medical treatments, but, again, was hindered in repaying his other debts. His medical costs rose in July 2013, when Applicant again became unemployed. Applicant's attorney negotiated a \$25,000 settlement with the driver's insurance company, but Applicant has yet to receive any of those funds. (Answer; Gx. 3; Ax. A; Ax. P; Ax. Y; Tr. 74 - 82)

Applicant's gross monthly income from his current job is almost \$11,000. After deductions for taxes, Social Security, Medicare, medical insurance, and child support, Applicant takes home about \$6,300 each month. From that is deducted about \$4,200 in regular monthly expenses (rent, utilities, car expenses, food, etc.), leaving an average net monthly remainder of \$2,100. Through a Chapter 13 bankruptcy petition he filed on December 5, 2014, Applicant is now paying \$1,620 each month to satisfy in full the debts listed in the SOR, as well as other smaller accounts that were not delinquent and were not alleged in the SOR. Applicant made his first bi-monthly payment to the trustee

on December 15, 2014. The Chapter 13 plan was approved on February 11, 2015. (Answer; Ax. A; Ax. G; Ax. W; Ax. AA; Ax. CC; Ax. DD; Tr. 70 - 73, 84 - 88)

Applicant has not incurred any new unpaid debts since he was hired by his current employer. He files and pays his taxes on time. Despite falling behind on his mortgage and other accounts while unemployed, he has resolved those debts in a timely manner as his circumstances have allowed. Before he lost his job in 2011, his credit score was excellent and he had no history of unresolved indebtedness. (Answer; Ax. A; Ax. Q)

Applicant has a superb professional reputation. Three witnesses from his workplace testified to his reliability, trustworthiness, and integrity. (Ax. B - F; Ax. T; Ax. U; Tr. 95 - 112)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able

⁴ See Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶

A person who has access to classified information enters 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 one who will protect the national interests as his or her 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.⁷

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), the record clearly requires an emphasis on Applicant's inability to pay rather than any suggestion of her unwillingness to resolve his debts.

I also conclude that the record supports application of the following AG ¶ 20 mitigating conditions:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

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.

Applicant experienced financial problems beginning in 2011, when he underwent a two-year period of unemployment or underemployment. Before then, his credit was good and he was meeting all of his obligations, including monthly support payments for his two children. Between 2011 and December 2013, when Applicant was hired for his current job, he continued to meet his mortgage and other obligations, but relied on credit cards at times to make ends meet. In response to the Government's information, Applicant documented reasonable efforts to resolve his debts as they arose. However, his 2012 legal fees and his 2013 medical expenses combined with his erratic income to hinder his ability to correct his financial problems. Under these circumstances, it was prudent for Applicant to seek protection from, and to repay, his creditors through a Chapter 13 bankruptcy petition. He now has the means with which to meet his obligations under that petition, and to avoid future financial difficulties.

Applicant's financial problems are not indicative of his judgment and reliability, and there is little likelihood he will resort to improper or illegal conduct to resolve his debts. In addition to evaluating the facts presented, and having applied the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has been candid about his debts, and he has dealt with his financial difficulties in a way that reflects positively on his judgment and reliability. His positive reputation in the workplace also supports a conclusion that Applicant is a mature, responsible individual who can be trusted with sensitive information. On balance, he has mitigated the security concerns raised by the Government's information.

Formal Findings

Formal findings 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.d:	For Applicant

Conclusion

It is clearly consistent with the national interest for Applicant to be eligible for access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge