



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 14-05488
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Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not meet his burden of persuasion in response to the Government’s adverse information about his finances. He failed to mitigate the security concerns raised by a long and recurrent history of financial problems. His request for continued access to classified information is denied.

Statement of the Case

On February 26, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew his eligibility for access to classified information as required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by the Directive.

On December 18, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² Applicant timely responded to the SOR and requested a decision without a hearing. On July 7, 2015, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on July 21, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on August 20, 2015, without any response to the FORM from Applicant. The case was assigned to me on October 5, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$68,884 for nine delinquent debts (SOR 1.a - 1.i). The Government also alleged that in 2004, a previous request for clearance was denied because of security concerns about earlier financial problems and associated criminal and personal conduct. His clearance at that time was eventually granted on appeal, but was conditioned on his ability to avoid a recurrence of financial problems (SOR 1.j). Applicant admitted all but one (SOR 1.f) of the SOR allegations. (FORM, Items 1 and 2) In addition to his admissions, I make the following findings of fact.

Applicant is a 36-year-old employee of a defense contractor, where he has worked as a senior engineering technician since March 2010. He requires a security clearance for his job. From January 2001 until March 2010, Applicant served on active duty in the U.S. Navy. He was honorably discharged as an air crewman operator first class (AW1). Applicant found employment with a defense contractor after leaving active duty, but left his job at the end of 2013 because his wife had an opportunity for a tuition-free college education. However, Applicant could not find work for almost three months and began to accumulate unpaid debts, one of which is alleged at SOR 1.b. (FORM, Items 2 and 3)

While Applicant was on active duty, he applied for and received a security clearance required for his duties as an AW. However, the investigation and adjudication in that case revealed financial misconduct involving criminal offenses such as theft and embezzlement, as well as delinquent debts. DOD adjudicators initially revoked Applicant's clearance, but he appealed that decision and was granted a security clearance. Applicant was notified at that time that his clearance was conditioned on his "continuing commitment to meeting [his] financial obligations and that [he] incur no further debt." (FORM, Item 4)

When Applicant submitted his February 2013 EQIP to renew his clearance eligibility, he disclosed the debts alleged at SOR 1.a, 1.f, and 1.i. Subsequent credit reports documented all of the debts alleged in the SOR. (FORM, Items 3, 5 - 7) In

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included six exhibits (Items 1 - 6) proffered in support of the Government's case.

response to the SOR, Applicant established that he has paid the debt at SOR 1.f, a military exchange credit card debt of \$87. Applicant also claimed that he would commence repayment plans between March and July 2015 for the debts alleged at SOR 1.b - 1.e, and 1.i. As to SOR 1.b and 1.e, he produced information documenting the payment terms and schedules of payments, but he did not establish that he actually has made any of those payments. (FORM, Item 2)

The debts alleged at SOR 1.g and 1.h for taxes imposed on Applicant as an heir to his uncle's estate in 2005. Applicant claims he has been repaying that debt at a monthly rate of \$175. Applicant did not produce any documentary corroboration of the source of the debts or his payments thereof. (FORM, Items 2 and 3)

The debt at SOR 1.a is for the first mortgage on a condo Applicant bought while in the Navy. He paid off a second mortgage using the inheritance from his uncle's estate. However, in 2011, after he left active duty, the homeowners' association (HOA) fees quadrupled and Applicant had trouble making his monthly payments. He moved and tried to rent out the condo, but he could not command enough rent to cover his costs. By the time he put the property up for sale, the condo's value had fallen and the real estate market had crashed. Applicant has been trying unsuccessfully for almost four years to execute a mortgage modification because the property is worth about \$60,000 less than he owes. Applicant claimed he also has been trying to dispose of the mortgage through a short sale, again unsuccessfully. Other than the explanation he provided in his SOR response, Applicant did not produce any documentation of his efforts to resolve this debt. (FORM, Items 2 and 3)

Applicant claims his current finances are sound. He returned to work in the defense industry in September 2014. He stated that his career is stable and will support the monthly payments he claims to be making. Letters from current and former professional associates support Applicant's request for clearance, citing his trustworthiness, responsibility and overall technical expertise. (FORM, Item 2)

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. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new 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

⁴ Directive. 6.3.

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. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.⁹

Analysis

Financial Considerations

Available information supports the allegations in the SOR. The facts established herein raise a security concern addressed, in relevant part, 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.

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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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*). Applicant debts have been outstanding, in some cases, for almost eight years.

By contrast, I have considered the following AG 20 mitigating conditions:

- (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.

Applicant has a long history of financial problems before and after his military service. The facts adjudicated in his Navy request for clearance are relevant to this suitability assessment insofar as they bear on whether Applicant's financial problems will recur. In this case, he incurred state tax debts relative to an inheritance in 2005. Applicant also has a mortgage debt he has been trying to resolve since at least 2011. Assuming these obligations arose through unforeseen circumstances, it is still incumbent on Applicant to show that he acted responsibly in the face of those circumstances. Applicant did not corroborate his explanations and claims of repayment or negotiation with creditors. His debts are still outstanding and must be considered as recent. His actions to resolve his debts are either ongoing or have only come to fruition after receiving the SOR. Finally, Applicant did not provide information to support his claim that his current finances are stable. All of the foregoing shows that none of the AG 20 mitigating conditions apply.

On balance, the record evidence as a whole regarding Applicant's finances leads me to conclude that Applicant has not met his burden of persuasion in response to the Government's case against him. Accordingly, Applicant has not mitigated the security concerns under this guideline.

In addition to my evaluation of the facts and application of 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). Specifically, I have considered the letters of support and recommendation submitted on Applicant's behalf. I also have

given due weight to Applicant's service in the Navy. However, in light of the previous conditional adjudication of his clearance suitability, and without more substantive information to support Applicant's claims of repayments and financial stability, I am left with doubts about whether his finances will continue to present a security concern. Because protection of the national interest is the main purpose of these adjudications, those doubts must be resolved against the Applicant.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g - 1.j:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge