



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-05534
)	
Applicant for Security Clearance)	

Appearances

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

06/03/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's response to his financial problems indicates good judgment and reliability. His current finances are sound, and the presence of unpaid debt does not present an unacceptable security concern. His request for access to classified information is granted.

Statement of the Case

On October 10, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to classified information. 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 December 16, 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 requested a hearing. I was assigned this case on March 4, 2015, and I convened a hearing on March 24, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified and proffered Applicant's Exhibits (Ax.) A and B. I also held the record open after the hearing to receive from Applicant additional relevant information. DOHA received the hearing transcript (Tr.) on April 2, 2015. The record closed on April 6, 2015, when I received Ax. C - I. All exhibits were admitted without objection.⁴

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$49,244 for eight delinquent or past-due debts (SOR 1.a - 1.h). Applicant admitted, with explanations, the allegations at SOR 1.a, 1.b, 1.f, and 1.g. He denied with explanations the allegations at SOR 1.c - 1.e and 1.h, and with his Answer, provided information establishing he has paid or otherwise resolved those debts. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 47 years old and works as an aviation maintenance mechanic for a major airline subcontracted to perform maintenance at a U.S. military base. This is his first application for a security clearance. Applicant has worked for his employer since October 1988. He has an excellent reputation in the workplace. (Gx. 1; Ax. C; Ax. D)

Applicant and his wife were married from April 2005 until they divorced in June 2013. They separated in April 2012. They have no children together and Applicant is not obligated to pay support for his ex-wife. (Gx. 1; Gx. 3; Tr. 48)

When Applicant submitted his EQIP, he disclosed several past-due or delinquent debts, some of which were alleged in the SOR. Credit reports obtained during his background investigation documented all of the SOR allegations. Applicant's financial problems began around 2007 or 2008, after his ex-wife was laid off from her job and

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.

⁴ Department Counsel's memorandum forwarding Ax. C - I and waiving objections thereto is included in the record as Hx. 2.

she was unemployed until 2009. Applicant was making about \$32 an hour, but he also relied on significant time-and-a-half overtime each month. He admitted that, while he had overtime and his ex-wife was employed, he was careless with his credit and ran up too much personal debt. After she was laid off, Applicant's employer cut overtime and Applicant began struggling to stay current in his payment obligations. Starting in 2008 or 2009, Applicant began contacting his creditors to make repayment arrangements. The information provided with his Answer and in Ax. E - G shows a record of consistent payments and actions to resolve his past-due debts over at least the past two years. Available information shows Applicant has paid or otherwise resolved the debts at 1.a, 1.c, 1.d, 1.e, and 1.h. (Answer; Gx. 1 - 4; Ax. A; Ax. E - G; Tr. 31, 49 - 50, 62, 71)

As to the debts at SOR 1.b and 1.g, Applicant has been unable to obtain information about the status of those debts, which have been referred from one collection agency to another. He avers he will resolve those debts once he is able to contact the current holder of those accounts. As to SOR 1.f, a \$19,030 (according to the latest communication from the law firm collecting on this account) debt being enforced by a judgment lien, the original amount due was about \$9,000 for a delinquent credit card. Applicant recently received an offer to settle this debt for about 65 percent of the current stated balance due. Applicant is motivated to resolve this debt because the lien will interfere with his ability to refinance his mortgage to a lower monthly payment. (Answer; Gx. 3; Ax. H; Tr. 37 - 40, 51 - 55)

Applicant's current finances are sound. A personal financial statement (PFS) shows that he has about \$600 remaining each month after expenses, which include debt repayments. Applicant also has saved about \$150,000 in a retirement account, and he has received part of an inheritance from his parents, both of whom have passed away since 2013. He used some of his inheritance and some of his retirement savings to pay the debts at SOR 1.a, 1.c, 1.d, and 1.e. Applicant and his four siblings also are in the process of selling their late parents' home. He estimates his share of the proceeds from that sale will be just under \$100,000. (Ax. I; Tr. 42, 55 - 58, 60 - 61, 64 - 71, 77)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ 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

⁵ See Directive. 6.3.

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 interest⁶ 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 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.⁷

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.⁸

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

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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*).

I also conclude that the record supports application of 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;

(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.

Admittedly, Applicant put his finances at risk by accruing high balances on his credit cards while he and his ex-wife were both employed and he could count on a lot of overtime. When his ex-wife was laid off and his overtime cut, Applicant found himself overextended and unable to pay his debts as agreed. However, Applicant has presented information showing he started trying to resolve his debts long before the SOR was issued. He also established that his current finances are sound; that he is able and likely to continue resolving his remaining debts; and that he has the requisite good judgment to responsibly manage his personal finances so as to avoid future unpaid debts. On balance, Applicant has mitigated the security concerns about his financial problems.

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 financial problems at every stage of the investigation and adjudication of his application for clearance. His reputation in the work place is consistent with the good judgment he has shown in response to his financial problems. A fair and commonsense assessment of this record shows 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.h: For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge