



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-06244
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/26/2015

Decision

MALONE, Matthew E., Administrative Judge:

The security concerns about Applicant’s personal conduct are mitigated by the passage of time, by the effects of counseling, and by a positive change in Applicant’s personal and professional circumstances. Applicant’s financial problems are also mitigated by his proactive response to his debts, by his repayment of most of his past-due debts, and by a demonstrated ability to responsibly manage his personal finances. His request for a security clearance is granted.

Statement of the Case

On March 31, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his employment at 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 continue to hold a security clearance.¹

On January 24, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for personal conduct (Guideline E) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on May 5, 2015, and I convened a hearing on May 28, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 5. Applicant testified and presented Applicant's Exhibit (Ax.) A. These exhibits were admitted without objection. Additionally, I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on June 3, 2015, when I received a 78-page exhibit admitted without objection as Ax. B. A transcript of the hearing (Tr.) was received on June 8, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$29,954 for 21 delinquent or past-due debts (SOR 1.a - 1.u). Applicant denied SOR 1.a, 1.d, 1.k, 1.s, and 1.t. At the hearing, Department Counsel moved to withdraw SOR 1.a, and acknowledged that the allegations at SOR 1.s and 1.t are duplicates of 1.o and 1.p, and that SOR 1.r is a duplicate of 1.k. Accordingly, SOR 1.a, 1.r, 1.s, and 1.t are resolved for Applicant. The total amount in controversy for the remaining 17 debts, to which Applicant admitted with explanations, is \$20,991. (Answer; Tr. 9 - 13, 77)

Under Guideline E, the Government alleged that in November 2009, Applicant was administratively separated from the U.S. Air Force for a pattern of misconduct between 2005 and 2009 that included three non-judicial punishments and four letters of reprimand. (SOR 2.a). It was also alleged that between May 2005 and May 2014, Applicant was cited for eight traffic offenses, including four speeding or careless driving offenses, and other failures to comply with laws regarding motor vehicle operation and insurance. (SOR 2.b - 2.i) Applicant admitted, with explanations, all of these allegations. In addition to the facts established through Applicant's admissions, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor, for whom he has worked as a plane captain and aircraft mechanic since December 2013. From May 2004 until November 2009, Applicant served in the Air Force, where he was trained as an aviation mechanic and plane captain, the field in which he still works as a civilian. Between November 2009 and October 2010, Applicant was unemployed or employed part-time while studying to receive his Federal Aviation Administration (FAA) airframe

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).

and power plant (A&P) certification. Since October 2010, Applicant has been steadily employed with different companies as an aviation mechanic. He is currently a few hours short of earning an associate's degree in aeronautical engineering. Applicant has held a secret security clearance since February 2005. He submitted his EQIP in March 2014 to renew his clearance eligibility. (Gx. 1; Tr. 6 - 7, 43, 46 - 47)

Applicant and his wife have been married since September 2009. He was previously married from August 2003 until September 2009, when he and his first wife finalized a divorce after separating in 2008. Applicant has two sons, ages 11 and 9, from his first marriage, and a daughter, age 5, with his second wife. As part of his divorce, Applicant was given sole custody of his sons. Applicant's younger son is autistic and has since returned to live with his mother to receive better clinical care and special education services. (Answer; Gx. 1; Gx. 2; Ax. A; Tr. 36 - 37, 44 - 46)

In his EQIP, Applicant disclosed in detail most of the debts alleged in the SOR, as well as several debts that he had already resolved. Credit reports obtained during his current background investigation further documented all of the debts alleged in the SOR. (Gx. 1; Gx. 3; Gx. 4)

Applicant has paid all but two of the debts alleged in the SOR that were not withdrawn or shown to be duplicates. Since about June 2014, he has consistently been making monthly payments on the debts at SOR 1.b and 1.f. SOR 1.b is for a car loan on which he fell behind while trying to also repay a car loan for his ex-wife after their divorce. Applicant had co-signed both car loans with the same creditor, who unexpectedly started applying his payments to his ex-wife's car loan instead of to his loan. As of the hearing, he had reduced the remaining balance of that debt by about \$2,000. At the same time, he was nearly finished making payments to resolve SOR 1.f. (Answer; Ax. A; Ax. B; Tr. 50 - 56)

Applicant initially experienced financial problems because of financial irresponsibility during his first two years in the Air Force. Some of the debts he disclosed in his EQIP were accrued during that period, but he had paid them off before submitting his current application for clearance. However, he has more recently experienced additional financial problems caused, in large part, by the end of his first marriage beginning around 2008. Applicant had sole custody of his sons but did not receive any child support. In exchange for child custody, Applicant became obligated to pay most of the marital debts, such as his ex-wife's car loan and other loans and credit cards they had obtained. The debt at SOR 1.d arose when both he and his ex-wife were discharged from the Air Force. At the time, they erroneously claimed that provisions of the Soldiers and Sailors Relief Act (SSRA) allowed them to break their lease when they had to leave their last duty station. Applicant has since settled this dispute with his former landlord. Other debts, such as cable television bills and cell phone accounts became delinquent after Applicant moved several times for employment between 2011 and 2014, and did not receive the last bill. All of those accounts have been paid. (Gx. 1; Gx. 2; Ax. A; Ax. B; Tr. 37 - 40)

Applicant's current finances are sound. He presented substantial and detailed information that reflects an organized approach to paying off his debts over the past 18 months, while increasing his savings, meeting all of his regular monthly obligations, and avoiding additional debt. He has been in regular contact with his creditors since late 2012 and he has received credit counseling from a nationally-known banking institution, most of whose customers are current or former military members. His work with that company also includes continuous monitoring of his credit history. (Answer; Gx. 4; Ax. A; Ax. B; Tr. 57 - 66)

Applicant departure from the Air Force in 2009 was through administrative separation for a pattern of misconduct. He received a general discharge under honorable conditions. The misconduct addressed by the Air Force consisted of multiple violations of the UCMJ for which he either was punished at UCMJ Article 15 (non-judicial punishment) hearings or received letters of reprimand.

In January 2005, he was disciplined for not ensuring that an airman not of drinking age and in Applicant's charge at an off-duty social event did not consume alcohol that was being provided to other service members at the event. The underage airman was later found to be heavily intoxicated, but Applicant claims the airman obtained alcohol after he left the social event. He was disciplined at an Article 15 hearing. (Answer; Gx. 1; Gx. 2; Ax. A; Ax. B; Tr. 14)

In July 2009, Applicant was disciplined for failing to go to his appointed place of duty. Applicant had recently been assigned to a supervisory position normally filled by a more senior non-commissioned officer. Applicant was aware that other supervisors occasionally used their discretion to allow subordinates a long lunch hour as a reward for their hard work. However, when Applicant did so he was informed that it was a violation of command policy and was disciplined at an Article 15 hearing. In September 2015, Applicant also received non-judicial punishment for leaving his child unattended. Applicant was a single parent and was asleep when his younger son, who has since been diagnosed with severe autism, unexpectedly wandered out of his house on base early in the morning. A neighbor saw the boy and called base police. Applicant was charged with a violation of UCMJ Article 134 (General Article). (Answer; Gx. 1; Gx. 2; Ax. A; Ax. B)

Applicant also received four letters of reprimand. In October 2007, Applicant chose not to report for his promotion test because of lack of sleep. He and his wife had been arguing most of the night before and Applicant felt he was not physically able due to lack of sleep to take the test. In August 2008, Applicant received another letter of reprimand for failure to go to his appointed place of duty. He overslept and failed to attend a military training course as ordered. In August 2009, Applicant, who lived in base housing, went away on leave for three weeks and did not make arrangements for lawn care in his absence. Applicant was issued a letter of reprimand for failing to properly maintain his quarters. Finally, in August 2009, Applicant received a letter of reprimand for bringing discredit to the Air Force for failing to pay a speeding ticket. (Answer; Gx. 1; Gx. 2; Ax. A; Ax. B; Tr. 36)

Between May 2005 and June 2012, Applicant was twice cited for speeding and once for careless driving. He also was twice cited for failing to comply with seat belt laws twice, driving on a suspended license, failing to have proof of insurance, and failing to display proper registration. Applicant's failure to timely pay the fine for his careless driving charge resulted in his August 2009 letter of reprimand. (Answer; Gx. 1; Gx. 2; Gx. 5; Ax. A; Ax. B; Tr. 69 - 70)

Applicant also was cited in March 2014 for failing to pay a bridge toll. Although the bridge photograph showed his car going through the toll, his car was being driven by his wife. Finally, Applicant was stopped and ticketed for speeding (89 in a 65 mph zone) in May 2014. Applicant pleaded not guilty, claiming that it was a car that was passing him and not he that was speeding. Applicant paid the fine but adjudication was withheld contingent on Applicant's completion of a safe driving course. (Answer; Gx. 1; Gx. 2; Gx. 5; Ax. A; Ax. B; Tr. 70)

Applicant has acknowledged responsibility for all of his Air Force misconduct and traffic violations. As to the latter, all of his fines have been paid and Applicant provided information showing that he has been in compliance with insurance and registration requirements for some time. Applicant has acknowledged that he had a problem rushing to appointments that would result in speeding tickets. His driving infractions, as well as some of his Air Force misconduct, were tied to the stress of his divorce and being a single parent. Additionally, Applicant was diagnosed with post-traumatic stress disorder (PTSD) as a result of a deployment to Iraq in 2007. He has addressed all of those issues through clinical counseling, and he now is on medication to help him deal with stress and help him with everyday organizational challenges. He also uses an application on his smart phone that alerts him when he goes more than five miles per hour over the posted speed limit wherever he is. (Answer; Ax. A; Ax. B; Tr. 41 - 42, 66 - 68, 72 - 73)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ 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

³ See Directive. 6.3.

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 interest⁴ 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.⁵

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.⁶

Analysis

Financial Considerations

Available information is sufficient to support both of the SOR allegations under this guideline. The facts established raise a security concern about Applicant's finances that is 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

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, this record supports application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant had financial problems due to poor decision making for the first two years of his Air Force service. Although he paid the debts he incurred during that period, he once again had financial problems starting around 2008 that resulted in numerous past-due and delinquent debts.

I have also considered the following pertinent 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;

(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.

All of these mitigating conditions apply. Applicant's delinquent debts arose almost entirely from his divorce and other circumstances beyond his control. The debts at issue in this case are not the result of irresponsible financial decisions. Applicant acted responsibly over the past six years to pay or otherwise resolve his debts. Of the 17 debts at issue in this case, Applicant has paid or otherwise resolve all but two. Available information suggests that at or near the date of this decision, one of those debts will have been paid in full. Applicant was proactive in contacting his creditors and making steady payments, while at the same time ensuring he was meeting his ongoing obligations and not taking on new debt.

Applicant's current finances are sound. He presented extensive and detailed information showing that he has a significant monthly cash flow after expenses, that he

works from a structured budget, and that he is saving as much as is prudent under the circumstances. Applicant also sought financial counseling and credit monitoring from a reputable source, and he has been able to support his challenges to the accuracy of some of the debts attributed to him. He has remarried and is better able to avoid similar financial problems in the future. The security concerns raised by the Government's information about Applicant's finances are mitigated.

Personal Conduct

Applicant disclosed in his EQIP some of the misconduct alleged at SOR 2.a - 2.i. The record evidence as a whole presents a combination of his Air Force misconduct and multiple traffic violations starting in 2005 that call into question Applicant's judgment and his ability or willingness to comply with regulations or procedures. This information raises a security concern that is articulated at AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, I have considered the potential applicability of the following AG ¶ 16 disqualifying conditions:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . (3) a pattern of dishonesty or rule violations.

By contrast, the record also requires application of the following AG ¶ 17 mitigating conditions:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant has acknowledged his misconduct in the Air Force and that he had a problem complying with traffic laws. However, he presented sufficient information showing that he has matured since leaving the Air Force; that his personal circumstances have improved now that he is divorced and remarried; that he has received clinical as well as financial counseling supportive of stability and organization; and that the clinical and technological assistance he has received will help him avoid future traffic violations and financial problems. The record evidence as a whole suggest that there has been a sufficient passage of time and improvement in Applicant's personal and professional circumstances from which to conclude that the security concerns about his personal conduct are mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Throughout the investigative and adjudicative processes, Applicant has been candid and forthright about the adverse financial and personal information in his background. He has held a security clearance since 2005, and he has been fastidious in his approach to his finances and to other facets of his personal life. A fair and commonsense assessment of all available information shows Applicant has matured; that he has sought the necessary help to correct the underlying causes of his misconduct and financial problems; and that he can be relied on to comply with rules and procedures governing the protection of classified information. The doubts about Applicant's continued suitability for access to classified information raised by his financial problems and personal conduct have been satisfied.

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
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b - 1.u:	For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a - 2.i: For Applicant

Conclusion

In light of all of the foregoing, 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