



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-00682
)
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's long history of multiple bankruptcy petitions precludes a finding that he has resolved his debts. He did not mitigate the security concerns raised by his financial problems. His request for a security clearance is denied.

Statement of the Case

On August 31, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for a security clearance required for his employment with 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 receive a security clearance.¹

On August 17, 2015, DOD issued 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. The case was assigned to me on January 8, 2016, and I convened the requested hearing on February 10, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 9.³ Applicant testified and presented Applicant's Exhibits (Ax.) A - C. All exhibits were admitted without objection. A transcript of the hearing (Tr.) was received on February 22, 2016.

Findings of Fact

Under Guideline F, the Government alleged that between 1995 and 2012, Applicant filed five Chapter 13 bankruptcy petitions (SOR 1.a - 1.e); and that, as of the date of the SOR, he owed \$288,114 for 24 past-due or delinquent debts (SOR 1.f - 1.cc). In response to the SOR, Applicant admitted, with explanations, all of the allegations. (Answer; Tr. 14 - 19) In addition to the facts established through Applicant's admissions, I make the following findings of fact.

Applicant is 54 years old and works as an electronic equipment technician for a defense contractor, a job for which he was hired in June 2010. From October 1985 until October 2005, he served as in the United States Navy, retiring as a first class petty officer. Applicant had hoped to continue his Navy career beyond 2005. However, he was unable to advance beyond his final rank because, although he had passed all of the advancement exams, the aviation warfare skill set in which he worked was overcrowded, making it nearly impossible to advance to chief petty officer. Under the Navy's high-year tenure policy, Applicant had to retire rather than stay on as a first class petty officer. Applicant held a security clearance throughout his Navy career. (Gx. 1; Gx. 2; Tr. 42, 65)

Applicant and his wife have been married since June 1994. When they married, Applicant did not have any financial problems and was able to pay his debts on time. However, his wife came to the marriage with significant personal debt from her previous marriage. In July 1995, after struggling to meet some of his regular obligations while paying down his wife's debts, Applicant filed for Chapter 13 bankruptcy protection and started making monthly payments through an approved wage earner's plan. However,

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 At Department Counsel's request, I have included, as Hearing Exhibit (Hx.) 1, a copy of the December 2, 2015 letter that forwarded Gx. 1- 5 to Applicant, in accordance with Directive Section E3.1.13.

when the monthly payment increased to accommodate modifications to the petition, Applicant was unable to keep up. In March 1997, Applicant's bankruptcy was converted to a Chapter 7 liquidation, which resulted in a discharge of his debts in July 1997. (Gx. 1; Gx. 2; Gx. 5; Tr. 42 - 43, 45)

In December 2004, while still on active duty, Applicant filed a second Chapter 13 bankruptcy petition. He took this action after falling behind on his truck payments and after his wife, who has had medical problems over the years, was unable to qualify for disability benefits. After retiring from the Navy in October 2005, Applicant was unable to find work that paid enough to meet his regular financial obligations. He was increasingly unable to make his Chapter 13 payments and converted the petition to a Chapter 7 liquidation petition in July 2005. His debts were discharged in October 2005. (Gx. 2; Gx. 6; Tr. 42 - 44, 46 - 49)

Applicant was unemployed until August 2006, when he found part-time work as a courier. In May 2007, he also started working full time for a landscaping company. He was laid off from that job in March 2009, but continued his part-time job until February 2010, when he was hired by a staffing agency for the position he now occupies as a direct employee of the defense contractor sponsoring his request for clearance. (Answer; Gx. 1; Gx. 2; Tr. 66 - 69)

After Applicant was laid off in 2009, he fell behind on his mortgage and other obligations. While trying unsuccessfully to work with his mortgage lender for a mortgage modification, Applicant filed for Chapter 13 bankruptcy protection in November 2009. That petition, alleged at SOR 1.c and still in place through various modifications and dismissals alleged at SOR 1.d and 1.e, was dismissed in May 2011 for failure to make payments required under the plan. That dismissal was vacated in September 2011 and a new, modified Chapter 13 petition was approved. The new petition addressed the same debts declared in the November 2009 petition. Applicant resumed making the required monthly payments. (Gx. 1; Gx. 2; Gx. 6; Gx. 7; Tr. 51 - 56)

In July 2012, Applicant's September 2011 Chapter 13 petition was dismissed for failure to make required payments. That petition was revived in August 2012, only to be dismissed again in June 2015 for failure to make payments. In August 2015, the dismissal of Applicant's August 2012 petition was vacated and Applicant is making \$450 monthly payments through a wage earner's plan that addresses, inter alia, the debts alleged at SOR 1.f - 1.z, 1.bb and 1.cc. (Gx. 9; Ax. A - C)

The debt at SOR 1.aa represents Applicant's mortgage, which was removed from the latest modification of the original 2009 petition after Applicant was ultimately unsuccessful in obtain a modification to the mortgage that was a condition of an August 2013 order granting Applicant's request to modify the August 2012 version of his bankruptcy petition. Applicant's home mortgage has since gone to foreclosure. Aside from decisions related to Applicant's attempts to salvage his mortgage, Applicant averred that the dismissals and re-filings of his bankruptcy petitions were due to

changes in, and alleged malfeasance by, the bankruptcy lawyers he retained. Another reason for the revision to Applicant's 2012 petition was the perfection of a lien against him by a homeowners association (HOA) for \$1,200 in unpaid HOA dues. He made six payments on this debt outside the Chapter 13 plan between June and November 2015. (Answer; Gx. 2; Gx. 9; Ax. A - C; Tr. 43 - 44, 49 - 51, 57 - 58, 71 - 73)

Also complicating Applicant's bankruptcy cases have been debts for unpaid taxes arising from miscalculations of his federal tax returns after he retired from the Navy. Taxes were not being withheld from his retired pay resulting in a tax bill he was unable to pay. Applicant also miscalculated the tax reporting requirements of wife's disability income and incurred another tax debt. His past-due tax obligations are included in his Chapter 13 repayments. (Gx. 2; Gx. 9; Tr. 55 - 56)

Applicant has been making monthly payments as required by the current version of his Chapter 13 petition, through which his debts will be satisfied in September 2017. Applicant characterized his current finances as sound, in that, he has not accrued new delinquent debts since he has worked for his current employer; he and his wife live frugally and well within their means, and he has about \$1,500 remaining each month after making his Chapter 13 payment and meeting all of his regular monthly expenses. Other than the financial counseling associated with bankruptcy filings, he has not obtained financial counseling or other professional financial assistance. (Ax. B; Tr. 59 - 61, 74 - 78)

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

⁴ See Directive, 6.3.

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 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 the SOR allegations under this guideline. The facts established reasonably 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 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*). For more than 20 years, Applicant's finances have been characterized by excessive debt that has been addressed only through multiple bankruptcy petitions.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The mitigating condition at AG ¶ 20(a) does not apply because Applicant is still in bankruptcy and his debts have not yet been resolved. Application of AG ¶ 20(b) is limited. Applicant experienced unforeseen events that impacted his financial health. His military career ended, not abruptly, but certainly sooner than he had planned; and he was unable to find employment for the better part of a year after retiring. However, his financial problems pre-dated his retirement by at least ten years. Most recently, Applicant was laid off in 2009 and only had part-time employment for almost a year. In assessing whether Applicant acted responsibly under those circumstances, I conclude he has not. Bankruptcy is a legitimate means of resolving indebtedness under certain circumstances, but it should not be used unless other avenues have been explored and exhausted. This record shows that bankruptcy has been Applicant's first and only response to financial problems. I am mindful of the fact that the three bankruptcies alleged in SOR 1.c - 1.e are more properly viewed as one action. Nonetheless, altogether Applicant has resorted to bankruptcy protection three times in the last 20 years. His first two attempts to complete Chapter 13 repayment plans failed. For the last seven years, he has been unable to complete a Chapter 13 repayment plan. Although he is now engaged in a repayment plan with manageable payments, Applicant's past performance does not inspire confidence that he will actually complete this plan without interruption.

Applicant did not submit information to corroborate his claim that his current finances are sound and his debts are under control. Nor has he sought professional counseling or financial assistance not related to his bankruptcy petitions. Finally, Applicant has not made good-faith efforts over the years to pay his debts. Rather than contact his non-mortgage creditors directly to resolve his debts, he forced his creditors

to comply with bankruptcy procedures to accept far less than what they are owed. AG ¶¶ 20(c) and 20(d) do not apply.

In summary, Applicant has not, given his long bankruptcy history, established a satisfactory track record of payments that supports a conclusion he will actually complete his current repayment plan. On balance, he has failed to mitigate the security concerns raised by his financial problems.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Specifically, I have considered Applicant's military service, as well as the various difficulties he has encountered since he left the Navy. However, that information is not sufficient to satisfy the doubts raised by the adverse information about his finances. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved in favor of the Government.

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
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Subparagraphs 1.a - 1.cc:	Against Applicant
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Conclusion

In light of all of the foregoing, 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