



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 18-00270
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Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not provide sufficient information in response to the Government's case to overcome the security concerns raised by his financial problems. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On November 14, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of his employment with a defense contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.¹

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

On June 8, 2018, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guidelines F (Financial Considerations) and E (Personal Conduct).² Applicant timely responded to the SOR (Answer) and requested a decision without a hearing.

On August 10, 2018, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on August 14, 2018, and he was informed he had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.⁴ The record closed on September 28, 2018, after Applicant did not respond to the FORM or object to the consideration of any of the Government's exhibits. I received this case for decision on December 21, 2018.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$22,158.40 for six delinquent or past-due debts (SOR 1.a – 1.f). SOR 1.a addressed a \$3,409 delinquent federal income tax debt for the 2015 tax year, and SOR 1.f addressed a \$1,872 debt for unpaid state personal property taxes in the 2015 tax year. The remaining allegations addressed a total of \$16,876 for four delinquent or past-due personal credit accounts. In response to the SOR, Applicant admitted all but SOR 1.e, claiming without any documentary support that he had paid that debt. (FORM, Item 1)

Under Guideline E, the Government alleged that Applicant intentionally made a false official statement when he omitted from a July 2009 e-QIP the debts alleged at SOR 1.a – 1.e (SOR 2.a). The record compiled in support of the SOR did not support that allegation. As provided for by section E3.1.13 of the Directive, Department Counsel amended the SOR by withdrawing SOR 2.a. (FORM, Section III at 2) Accordingly, only the issues raised under Guideline F were before me for decision.

All of the SOR allegations are supported by Applicant's admissions to the SOR (FORM, Item 1) and in statements he made during two personal subject interviews (PSI) on July 19 and August 15, 2017. Additionally, the information presented in two credit reports (FORM, Items 4 and 5) and documents from the IRS (FORM, Item 6) and the tax authority in the state where Applicant lives (FORM, Item 7) support the SOR allegations under Guideline F. In addition to the facts thus established, I make the following findings of fact.

Applicant is a 27-year-old employee of a defense contractor, for whom he has worked since March 2010. Applicant's federal income tax debt arose from early

² See Directive, Enclosure 2.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on seven enclosed exhibits (Items 1 – 7).

⁴ See Directive, Section E3.1.7.

withdrawal penalties from his 401k account to make a down payment on his home. The funds he withdrew became taxable income that Applicant failed to declare on his 2015 income tax returns. (FORM, Item 3)

Applicant's state property tax debt is actually due for the 2016 tax year, not for 2015 as alleged in SOR 1.f. Applicant incurred this debt for not paying the taxes associated with his mortgage. His taxes and insurance were not bundled with the mortgage and interest payments each month. The record does not contain any explanation of why Applicant did not pay his property taxes in 2016. (FORM, lte 3)

During his PSIs, Applicant stated his intention to use his 2017 income tax refund, along with a home equity loan, to resolve all of his outstanding debts. Applicant did not submit, either with his response to the SOR or by responding to the FORM, any information that shows he has acted to resolve any of his debts.

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

⁵ See Directive, 6.3.

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

facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

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. 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

This record reasonably raises the security concern expressed at AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, this record requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(f) (*failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required*).

By contrast, none of the information presented in this record supports application of any of the pertinent AG ¶ 20 mitigating conditions. The record shows Applicant's debts are current, insofar as they are still unresolved; that he has not made any payments to those debts; that he has not sought any professional financial assistance or counseling

⁷ See Directive, E3.1.14.

⁸ See Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

to improve his finances; and that he has not paid his tax debts. The security concerns raised by the adverse information about Applicant's finances are not mitigated.

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(d). My review of all of the available information leaves unanswered the doubts about Applicant's suitability for access to classified information that were raised by his financial problems. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

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.f:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

Conclusion

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

MATTHEW E. MALONE
Administrative Judge