



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 18-00333
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

01/10/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant presented sufficient information to mitigate the security concerns about his numerous unpaid debts, and about an arrest in February 2016. His request for continued security clearance eligibility is granted.

Statement of the Case

On May 26, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for a security clearance required for his employment with a federal 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 interests of national security for Applicant to have a security clearance.¹

On March 5, 2018, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for financial considerations (Guideline F) and criminal conduct (Guideline J). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on August 9, 2018, and convened the requested hearing on November 29, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 4. Applicant testified and proffered Applicant Exhibits (AX) A – D. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on December 7, 2018.

Findings of Fact

Under Guideline F, the Government alleged Applicant owed \$43,404 for ten delinquent or past-due debts (SOR 1.a – 1.j). Under Guideline J, it was alleged that on February 28, 2016, Applicant was arrested and charged with first-degree assault and use of a firearm (SOR 2.a). Applicant admitted with explanations and supporting documents all of the SOR allegations. In his e-QIP, he disclosed most of the information addressed in the SOR, and the Government's exhibits support each of the SOR allegations. (Answer; GX 1 – 4) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 42 years old. He has a bachelor's degree in computer science and is working toward his master's degree in that field. He also recently obtained several work-related certifications in the information technology (IT) field. Since at least 2006, he has worked for several companies in IT positions, including federal contractors in positions that require a security clearance. He most recently held a top secret clearance with eligibility for access to sensitive compartmented information (TS/SCI). Applicant attributes his financial problems to a period of unemployment and under-employment after he was laid off in February 2013. Applicant's employer lost a contract for classified work and could not retain him. Applicant was unable to find IT work that required a TS/SCI clearance and had to settle for a variety of jobs, both in IT and others, that did not last long and which did not pay very well. Applicant reports being unemployed for all of 2014. In September 2015, he was hired as a desktop analyst by the company that sponsored his current application for clearance. (Answer; GX 1; AX D; Tr. 8)

Before he was laid off in 2013, Applicant had no difficulty meeting all of his financial obligations and was financially well-off, earning as much as \$95,000 annually at one time. In late 2011, he started his own marketing business while still working full-time. To support his business venture, he relied on credit and overdraft protection accounts he had opened

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

at his credit union between 2005 and 2011. Those accounts were in good standing until about September 2013, when they became delinquent. They are addressed in SOR 1.a – 1.d. Since late 2016, Applicant has been making nominal monthly payments on those debts as part of an organized effort to resolve all of his debts. He has paid the debt at SOR 1.d. (Answer; GX 1 – 3; AX C; Tr. 48, 72 – 75)

Applicant also established in his response to the SOR that he has paid the debts at SOR 1.f – 1.i, and that he consistently is making monthly payments to the debt at SOR 1.e according to a settlement plan he negotiated with that creditor. The debt at SOR 1.j arose from injuries suffered in a car accident that was not Applicant's fault. At the time it happened, Applicant did not have medical insurance. He is currently waiting for proceeds to be paid in response to a claim he filed against the other driver's insurance. (Answer)

Applicant was earning about \$65,000 annually and had no financial problems before he was laid off in 2013. In October 2015, he found work that paid him enough to move out of his parents' home and to buy a car. Since then, he has paid his rent and car loan as required. Applicant also presented information showing he completed a well-known financial management course that has helped him effectively attack his debts and reduce his expenses. Using the lessons from that course, Applicant paid off those debts that were within his means to do so; he negotiated with his creditors to establish repayment agreements; and he has positioned himself to start paying more money to SOR 1.a – 1.c, the largest of his remaining debts. Applicant adheres to a detailed monthly budget and has eschewed building savings in favor of paying his debts. (Answer; Tr. 46 – 72, 75 – 81)

On February 28, 2016, Applicant was arrested and charged with first-degree assault and use of a firearm. The charges were brought by Applicant's former girlfriend and stemmed from an argument they had the day before. Both parties had called the police as the argument escalated, but no arrests were made that day. Applicant denied assaulting his ex-girlfriend, claiming instead that she repeatedly struck him on the back of the head as he was leaving her house. He required medical attention that evening. He admits he damaged his ex-girlfriend's cell phone during the altercation. He also admits he legally owns a registered firearm, but avers it was at his parents' house, where he lived at the time. His ex-girlfriend decided that evening to file a criminal complaint against Applicant, and local sheriff's deputies arrested Applicant at his house on February 28, 2016. (Answer; GX 1; GX 2; GX 4; AX A; Tr. 20 – 46)

Applicant never appeared at a hearing to answer the charges, which he has adamantly denied. On July 26, 2016, prosecutors dismissed the charges as being unsupported by any evidence. Available information also shows that Applicant's ex-girlfriend has filed numerous other groundless complaints against other boyfriends and against family members. (Answer; AX A; Tr. 63 – 68)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,² and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG).³ Decisions must also reflect consideration of the factors listed in ¶ 2(d) 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 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

² See Directive. 6.3.

³ The current adjudicative guidelines were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

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).

Analysis

Financial Considerations

The Government established Applicant accrued the delinquent debts alleged in the SOR. When the SOR was issued, most of those debts had not been resolved. That information reasonably raised a security concern about Applicant's finances that is articulated 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, available information supported application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). By contrast, Applicant established that his financial problems arose from unexpected periods of unemployment and under employment starting in February 2013. In response to those circumstances, Applicant took whatever work he could, while at the same time reducing his living and other expenses. In late 2015, he was able to earn enough money to support himself and begin addressing his debts. He has been addressing most of his debts since 2016, and he has paid five of the debts alleged in the SOR. Of the remaining five debts, he is in repayment of four debts through plans negotiated with those creditors. The debt at SOR 1.j is a medical debt likely to be satisfied through insurance payment from the at-fault driver in a recent accident with Applicant.

Applicant also showed that he completed a well-known financial management course. He is acting on the lessons learned from that course by managing his finances through a detailed monthly budget. He also has significantly reduced expenses in order to pay down his debts in a reliable and systematic way before setting aside money for savings. All of the foregoing 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;

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

On balance, I conclude the record as a whole is sufficient to mitigate the security concerns raised by the Government's information about Applicant's finances.

Criminal Conduct

The Government established that Applicant was arrested as alleged in the SOR. That information reasonably raised a security concern about criminal conduct that is articulated at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The only specific disqualifying condition to be considered here is at AG ¶ 31(b) (*evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted*). Available information showed that Applicant was, in fact, charged with assault and a firearm offense. However, the record does not contain a police report or other reliable information about what Applicant did or did not do. By contrast, Applicant established that the charges were dismissed before trial. Applicant has no further connection to his accuser and it is unlikely that the circumstances leading to that altercation will recur. AG ¶ 31(b) does not apply because available information does not include evidence or even a credible allegation of wrongdoing by Applicant.

In the alternative, this record requires application of the following mitigating condition at AG ¶ 32(c) (no reliable evidence to support that the individual committed the offense). I conclude that all available information probative of this issue shows that any security concerns about Applicant's arrest are mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Particularly noteworthy is the information regarding Applicant's response to adverse financial circumstances. It reflects well on Applicant's judgment and reliability. A fair and commonsense assessment of the record evidence as a whole shows the security concerns about his finances are mitigated.

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.j:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge