



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 18-00597
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Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

01/03/2019

Decision

MALONE, Matthew E., Administrative Judge:

A fair and commonsense assessment of the record evidence as a whole shows the security concerns raised by Applicant’s financial problems are mitigated. His request for a security clearance is granted.

Statement of the Case

On December 15, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 interests of national security for Applicant to have a security clearance.¹

On March 21, 2018, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F).² 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 28, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 3. Applicant and one witness testified. Applicant also proffered Applicant Exhibits (AX) A – G. All exhibits were admitted without objection.

I also held the record open after the hearing to receive additional relevant information. I received a transcript of the hearing (Tr.) on December 7, 2018. The record closed on December 20, 2018, when I received Department Counsel's waiver of objection to Applicant's timely post-hearing submissions, are admitted as AX H - Q.³

Findings of Fact

Under Guideline F, the Government alleged Applicant owed \$20,371 for ten delinquent or past-due debts (SOR 1.a – 1.j). In response, Applicant denied SOR 1.c and 1.g – 1.i, and admitted the remaining allegations. He also provided explanations and supporting documents. (Answer) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 59 years old and works as a laborer for a federal contractor, where he has been employed since May 2015. He requires a security clearance for access to the facilities to which he is assigned for work. Applicant and his wife were married in April 2017 after living together since July 2010. Applicant was previously married between September 1992 and April 1997, and between April 2004 and June 2010. He has one child, now an adult, from his first marriage. Applicant paid monthly child support as required between his divorce in 1997 and September 2015, when his support obligations ended. (Answer; GX 1; AX E; AX K; Tr. 61 – 62)

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

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. My decision in this case would have been the same under either version.

³ AX H and AX I are letters of recommendation from Applicant's supervisors; AX J is additional information regarding SOR 1.a; AX K is additional information about Applicant's history of meeting his child support obligations since November 2003; AX L is additional information about the medical debts at SOR 1.e, 1.g, and 1.j; AX M pertains to SOR 1.b; AX N reflects Applicant's request for information about the debt at SOR 1.f; AX O pertains to SOR 1.h and 1.i; AX P documents payments on the debt at SOR 1.d; and AX Q contains information about Applicant's use of a credit counseling firm and a copy of a recent credit report.

Applicant attended a technical training institute between 2009 and 2013, receiving certification as a help desk professional. He also attended one month training courses in 2006, 2007, and 2014. He financed his 2009 – 2013 studies through student loans that are currently in forbearance. Applicant has been employed in a variety of jobs since at least 2006. He was unemployed at the end of his employers' contracts between May 2013 and November 2014; and in April and May 2015. All of the alleged debts in the SOR are documented in two credit reports obtained during his background investigation. (GX 1 – 3; AX D)

The debt at SOR 1.a is for unpaid rent placed in collection and enforced by a civil judgment entered against Applicant in July 2012. Available information shows Applicant made several payments on this debt in 2012 and 2013. More recently, Applicant has been trying to negotiate a settlement or repayment plan for the remaining balance due. (Answer; GX 2; GX 3; AX J; Tr. 31 – 36)

The debt alleged at SOR 1.b is for unpaid debt, also in 2012. Applicant submitted information showing this debt has been paid. (Answer; GX 2; GX 3; AX G; AX M; Tr. 36 – 38)

Applicant disputes the debt at SOR 1.c, which is for a delinquent cell phone account. He submitted information that shows the creditor has no information attributing this debt to Applicant. The debt is not listed in the credit report Applicant submitted. (Answer; GX 2; GX 3; AX F; AX Q; Tr. 39 – 42)

The debt at SOR 1.d is for a delinquent utility account. Applicant has been making \$100 payments on that debt each month since April 2018. (Answer; GX 2; GX 3; AX A; AX P; Tr. 39 – 43)

The medical debts at SOR 1.e, 1.g, and 1.j are being addressed as one consolidated debt. Applicant has made monthly \$100 payments since April 2018. (Answer; GX 2; GX 3; AX B; AX C; AX L; Tr. 43 – 44, 49, 50 – 52)

The debt at SOR 1.f is for the balance remaining after resale of a car that was repossessed in 2011. Applicant has not resolved this debt. (Answer; GX 2; GX 3; AX N; 44 – 47, 65 – 66)

Available information shows that the debts at SOR 1.h and 1.i are for the same delinquent cable television account. Applicant presented information showing the debt has been paid. (Answer; GX 2; GX 3; AX O; Tr. 50)

Appellant attributes his unpaid debts to expenses arising from his second divorce in 2010. Thereafter, he endured periods of unemployment between 2013 and 2015 that interrupted his efforts to resolve his debts and further exacerbated his financial problems. He was unaware of several of the debts alleged in the SOR until he was interviewed by

a government investigator in December 2017. His efforts to pay his debts did not begin in earnest until April 2018 because he did not have enough money saved up to make payments. The largest of his unresolved debts is for the remainder after resale of a car that was repossessed in 2011, around the time of his second divorce. Applicant believed at the time that he had no further obligation, but he has recently attempted to correspond with that creditor (SOR 1.f) to make repayment arrangements. In addition to the debt resolution progress reflected in his response to the SOR and in his hearing exhibits, Applicant has enlisted the services of a credit counseling service through which he intends to clear up inaccuracies in his credit history and to negotiate repayments with his remaining creditors. (Answer; AX N; AX Q; Tr. 26 – 27, 44 – 47, 53 – 55, 65 – 66)

Applicant and his third wife manage their finances together. Because her income is substantially more than his, he provides his income to her to cover the expenses she does not pay. Credit reports show that Applicant has not incurred any new debts since 2016, and Applicant files and pays his federal and state income taxes as required. (GX 2; GX 3; Tr. 28 – 30, 58 – 76)

Applicant was candid and straightforward in his testimony. He appeared earnest in his desire to continue resolving his remaining debts and improve his finances. Applicant has a good reputation at work for reliability, hard work, and honesty. (AX H; AX I)

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(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

⁴ See Directive. 6.3.

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

The Government established that Applicant incurred delinquent or past-due debts totaling \$20,371. As of the close of the adjudication of the information obtained in his background investigation, much of that debt remained unresolved. That information reasonably raises 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.

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).

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

By contrast, Applicant's debts arose from or were exacerbated by his second divorce and a subsequent period of unemployment. He has acted responsibly in the last two years to resolve his debts, some of which he was not aware of until early 2018. Applicant has since has paid or otherwise resolved, through settlements or ongoing payment plans, the debts at SOR 1.b, 1.d, 1.e, and 1.g – 1.j. He also has sought, albeit recently, professional assistance in resolving his remaining debts and addressing inaccurate information in his credit history. Further, Applicant and his wife manage their finances in a prudent manner, they live entirely within their means, and they have incurred no new past-due or delinquent debts. 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.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive information about Applicant's performance and reputation in the workplace. Applicant was candid about his efforts to resolve his debts, and it appears he and his wife manage their finances so as to avoid future unpaid or past-due debts. 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

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