



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 18-00836
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Applicant for Security Clearance)

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred delinquent debts while he was deployed to Afghanistan in 2011, because his ex-wife abused the power of attorney he gave her before he deployed. In their ensuing divorce, Applicant was assigned most of their marital debt. Applicant has repaid all but one of the debts at issue here, and his financial and personal circumstances are much improved. He is unlikely to incur such financial problems again, and the security concerns about his finances are mitigated. His request for security clearance eligibility is granted.

Statement of the Case

On September 19, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background

investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance.¹

On May 4, 2018, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on September 19, 2018, and convened the requested hearing on, December 11, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 4. Applicant testified and proffered Applicant Exhibits (AX) A – E. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on January 7, 2019.

Findings of Fact

Under Guideline F, the Government alleged Applicant owed \$21,901 for 16 delinquent or past-due debts (SOR 1.a – 1.p). In response to the SOR, Applicant admitted only SOR 1.d, and he denied the rest. In his e-QIP, Applicant disclosed the debts alleged at SOR 1.a – 1.c, 1.g, and 1.i. The remaining debts are documented in three credit reports obtained during Applicant's background investigation and the adjudication of this case. (Answer; GX 1 – 4) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 29 years old. After working in various jobs after high school, he joined the Army in April 2010. Applicant served on active duty, which included a one-year deployment to Afghanistan in 2011 and 2012, until receiving an honorable discharge in October 2013. Thereafter, he served in the Army Reserve until he was medically discharged in February 2014. Except for four months in 2014, Applicant was unemployed after leaving the Army until he was hired by a defense contractor in July 2015. Applicant was hired by his current employer in January 2016. Applicant previously held a security clearance as part of his military duties in the Army Signal Corps. (GX 1; Tr. 6 – 7, 27, 29)

Applicant and his wife have been married since December 2016. They have two children under two years of age, for whom his wife cares as a stay-at-home mom. Applicant was previously married from June 2010 until a divorce decree was finalized in August 2014. The couple separated in 2012, one month after Applicant returned from Afghanistan. All but two² of the debts at issue in this case were opened in Applicant's name by his ex-wife either while he was overseas or shortly after he returned. She did so

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

² The debt at SOR 1.h was owed to the Department of Veterans Affairs (VA) for overpayment of benefits. That debt was resolved in February 2018. The debt at SOR 1.m was owed to the Defense Finance and Accounting Service (DFAS) for military equipment Applicant had not turned in when he returned from deployment. That debt was resolved in June 2016. (AX E; Tr. 38 – 40)

using a general power of attorney he gave her so she could manage their affairs in his absence. His ex-wife opened several accounts to buy things they could not afford, including a houseful of furniture, two cars, and even orthodontic braces. None of the accounts was paid as required during his absence. Applicant had no knowledge of her malfeasance until he returned. Even after they separated, she was able to abuse their finances by writing checks from their bank account and purchasing a second car. His ex-wife's conduct ended when Applicant closed their joint bank account. (GX 1 – 4; Tr. 26 – 27, 41)

Despite his ex-wife's misconduct, Applicant has accepted responsibility for the debts because it was he who gave her power of attorney in the first place. In May 2016, after nearly a year of steady employment with a defense contractor, Applicant obtained the services of a debt management firm (DMF) to negotiate with his creditors and establish a monthly repayment plan that would resolve most or all of his outstanding debts. Initially, debt payments were delayed by about seven months because DMF was unable to implement automatic withdrawals from either of Applicant's two bank accounts. When Applicant submitted his e-QIP, he was paying \$700 each month to pay the debts at SOR 1.a, 1.b, 1.c, 1.e, and 1.f. To date, only SOR 1.a remains unresolved, but his current monthly payment of \$483 is now being directed to pay that debt. (GX 1; AX B; AX E; Tr. 44 – 45)

Applicant successfully resolved the debts at SOR 1.g and 1.j after proving to those creditors that his ex-wife had misused his identity. In those instances, she had used his social security number but with her name on the accounts. Applicant resolved the remaining debts listed in the SOR by paying those creditors directly. (AX C – E; Tr. 31 – 41)

Applicant's current finances are sound. He has only two credit cards, which as of the hearing, had a combined balance due under \$700. He currently earns \$81,000 annually and has no other outstanding debts. Applicant files and pays his taxes as required, has a good command of his personal finances, and appears to be living modestly and within his means. (AX A; Tr. 28 – 30, 41, 46)

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).⁴ 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:

³ See Directive. 6.3.

⁴ 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.

(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 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 the delinquent debts alleged in the SOR were attributable to Applicant. When the SOR was issued, many of those debts had not yet been resolved. That information reasonably raised a security concern about Applicant's finances that is articulated at AG ¶ 18:

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).

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*). By contrast, Applicant established that his debts arose entirely from events and circumstances beyond his control. It is unreasonable to conclude he knew or could have known it was likely that his ex-wife would abuse a power of attorney on which most deploying service members rely to ensure their obligations are timely met during a prolonged absence from home.

In response to his ex-wife's actions, Applicant acted responsibly and promptly to change his financial circumstances. The couple separated and Applicant closed their accounts. Applicant was assigned most of the marital debt in a 2014 divorce. After gaining steady employment in the defense industry, Applicant has spent most of the past three years resolving all of the debts in which he had no part in generating. Applicant's finances are currently sound and it appears unlikely such financial problems will recur. 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;
- (d) the individual initiated and is adhering to 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.

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. 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 his 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.p: 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