



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 18-02591
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant presented sufficient information to mitigate the security concerns about his unpaid taxes, his failure to timely file some of his federal and state tax returns, and other financial problems. His request for continued security clearance eligibility is granted.

Statement of the Case

On December 5, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew 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 November 9, 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 March 11, 2019, and convened the requested hearing on April 18, 2019. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 9. Applicant testified and proffered Applicant Exhibits (AX) A – C. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on May 6, 2019.

Findings of Fact

Under Guideline F, the Government alleged Applicant owed the IRS \$13,500 for unpaid taxes from the 2012 and 2017 tax years (SOR 1.a); that he failed to timely file his federal income tax returns for the tax years 2012 through 2017 (SOR 1.b); and his state income tax returns for the tax years 2016 and 2017 (SOR 1.d). It was further alleged that Applicant owed \$1,314.66 for past-due state income taxes for the 2014 tax year pursuant to a tax lien filed against him in April 2018 (SOR 1.c); that he owed \$12,963 for six delinquent or past-due commercial debts (SOR 1.e – 1.j); and that on August 29, 2018, he filed for Chapter 13 bankruptcy protection through a petition that was still pending approval as of the issuance of the SOR (SOR 1.k).

In response to the SOR, Applicant admitted, with explanations, the SOR 1.a – 1.j allegations. As to SOR 1.k, Applicant denied the allegation, averring that the Chapter 13 petition was confirmed on November 9, 2018 and that he was making payments as required under the trustee's plan. (Answer) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 46 years old. After he graduated from high school in June 1991, he joined the U.S. Navy where he served as a machinist's mate until receiving an honorable discharge in June 1997. He is seeking to renew a security clearance he received in 2011. When he submitted his e-QIP in December 2017, he disclosed the fact that he had not timely filed his federal income tax returns for 2012 through 2016; that he had not yet filed his 2016 state income tax returns; and that he owed the debts alleged at SOR 1.e – 1.i. (GX 1; Tr. 6, 74)

Applicant was married from June 1993 until divorcing in October 2008. He has six children, some with his ex-wife and some outside the marriage, ranging in age from 5 to 28. Applicant is paying child support only for his youngest child. Since May 2002, Applicant has lived with his mother, who has a variety of medical conditions. He helps

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

pay the rent and other expenses, and he is her primary care giver. (GX 1; Tr. 6 – 7, 15 – 16, 39 – 41, 65, 74 – 75)

Applicant has worked as a warehouse specialist for two different companies since May 2006. He was laid off in July 2014 when his employer lost its federal contract. Applicant resumed working in December 2014 and remained employed as a procurement specialist until April 2017, when he again was laid off for one month after a lost contract. Applicant has been steadily employed since May 2017. His average monthly income has been \$3,000. (Answer; GX 1; GX 2; Tr. 33 – 37)

Between 2013, when his youngest child was born, and 2016, Applicant was actively involved with the child's mother in caring for and supporting the child. He often took the child to and from daycare, and cared for the child where the mother lived; however, Applicant has only seen his child once in the last two-and-one-half years. In 2016, the child's mother demanded financial support from Applicant. Applicant responded by requesting a DNA test to verify his paternity. That request meant that he was not obligated to make payments pending the results, which were positive. Applicant became obligated to make monthly child support payments beginning in March 2017, including an arrearage that accrued while the DNA test was pending. Between 2016 and 2018, the mother of Applicant's youngest child instituted multiple court hearings seeking modification of Applicant's child support payments. Between 2016 and 2018, Applicant has had to appear in at least eight such hearings, and only recently was able to finalize a child support requirement of \$504 each month. The payments are made from his bi-weekly paychecks at a rate of \$232.61. (Answer; GX 2; GX 9; Tr. 45, 58 – 59, 77 – 78, 81 – 85)

For the tax years 2012 through 2015, the grandmother of the mother of Applicant's youngest child prepared and filed Applicant's federal and state tax returns. After initially receiving refunds for those years, Applicant was notified in 2017 that mistakes had been made in those tax returns and that Applicant actually owed about \$8,000. The amount referenced in SOR 1.a is the result of interest and penalties. Applicant did not timely file his 2016 federal income tax returns because he could not obtain his W-2 form from the employer who laid him off in April 2017. He also delayed resolving his 2016 filing because he was often involved in court hearings for child support. The same was true for his late filing of his 2017 tax returns in 2018. By that time, Applicant was consulting with his bankruptcy attorney who advised Applicant the attorney would file the return as part of his bankruptcy services. All of Applicant's past-due income tax returns have been filed. (Answer; GX 2; GX 6; HX 9; Tr. 46 – 58, 78 – 80, 85 – 87)

Applicant incurred the debts addressed at SOR 1.e – 1.j as a result of financial challenges that began when he was laid off in 2014. Applicant has acknowledged that he was not properly managing his finances at the time. To resolve his federal income tax debt, Applicant entered into a monthly repayment plan with the IRS in February 2018. Applicant agreed to pay \$146 each month; however, before he could start making payments, he was sidetracked by additional child support hearings. The same was true

as he tried to negotiate repayment of his other past-due debts directly with his creditors. Until Applicant knew how much he had to pay in child support, he could not commit to regular payments. After March 2018, Applicant knew how much he had to pay in child support, so he resumed his communications with his creditors. The payments they demanded, even in settlement, exceeded what he could reasonably pay each month. Applicant contacted a bankruptcy attorney in July 2018 and filed for Chapter 13 bankruptcy protection in August 2018 to resolve his debts. All of the debts alleged in the SOR, including the state and federal income tax debts, are included in Applicant's petition. A repayment plan was approved in November 2018, and as of his hearing, Applicant had made the first seven of his plan's 60 payments. Applicant is resolving his child support arrearage and his tax debts through \$470 monthly payments under the bankruptcy plan. His bankruptcy and child support payments are paid as direct allotments from his paycheck. (Answer; GX 2; GX 6; AX A – C; Tr. 41 – 45, 79)

Appellant's current finances are stable. After all of his monthly expenses, including his child support and bankruptcy payments, he has a positive monthly cash flow. Appellant has not incurred any new debts, and he has reduced his personal expenses living with his mother and closely managing his money. When Appellant first applied for a security clearance in 2009, he had other past-due debts that were addressed in that background investigation. Applicant resolved those debts in a timely manner. His personal and professional circumstances have improved, and he now has a better awareness of how to manage his personal finances. (Answer; GX 2; Tr. 60 – 61, 65 – 69, 70 – 73)

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.

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.

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

Analysis

Financial Considerations

The Government established that Applicant failed to file some of his state and federal income tax returns as required, and that he incurred the delinquent tax and other debts alleged in the SOR. That information reasonably raised a security concern about Applicant's finances that is articulated generally 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

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).

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*); 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, Applicant established that his financial problems, as well as his failure to meet his tax return filing obligations, arose from events and circumstances beyond his control that are not likely to recur. Applicant's federal tax debt arose from errors made by the person who prepared his tax returns. Additionally, Appellant's period of unemployment in 2014 came at a time when he still had multiple child support obligations. Since then, Applicant has been consistently employed and he now has only one child support payment. Applicant's inability to address his tax debts was repeatedly interrupted by ongoing child support hearings that are now completed.

Once those issues were settled, Applicant could not negotiate affordable resolutions with his private creditors and elected to resolve all of his debts, including his tax debts and a child support arrearage, through a Chapter 13 bankruptcy repayment plan. Under the circumstances, this was a timely and reasonable course of action. As of his hearing, Applicant had made the first seven payments required by the bankruptcy plan and his regular child support payments have been allotted directly from his bi-weekly pay.

All of Applicant's income tax returns have been filed, and he is in good standing on all of his current obligations. His monthly finances are sound, he has a positive monthly cash flow, and he has not incurred any new delinquent or past-due debts. 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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). Applicant's response to adverse financial circumstances reflects well on his 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.k:	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