



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 19-01990
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2020

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his finances. A bankruptcy petition in 2000 occurred under circumstances unrelated to commercial credit accounts and student loans that became delinquent as his second marriage was ending. Information about his actions to address those debts, and the strength of his current finances, is sufficient to mitigate the security concerns raised by the Government's information. Applicant's request for a security clearance is granted.

Statement of the Case

On November 16, 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, 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, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On August 14, 2019, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was part of the current set of adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). I received the case on November 25, 2019, and I convened the requested hearing on January 28, 2020. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on February 6, 2020. Department Counsel proffered Government Exhibits (GX) 1 – 6. Applicant testified and proffered Applicant Exhibits (AX) A - E. All exhibits were admitted without objection. The record remained open after the hearing to allow Applicant to submit additional relevant information. The record closed on February 7, 2020, after I received Applicant's post-hearing submissions and Department Counsel's waiver of objection thereto. They have been admitted without objection as Applicant Exhibits (AX) F – J. HX 1 is the Index of Government Exhibits. HX 2 is a copy of Department Counsel's Discovery Letter, dated November 15, 2019. (Tr. 18 – 36)

Procedural Issue

At the hearing, Applicant raised a question about the actual status of his security clearance eligibility. He averred he was advised on January 27, 2020 by his employer's security officer that his clearance had been granted. (Tr. 6 – 8, 36 – 37) I asked Department Counsel to verify Applicant's status. A copy of the email January 27, 2020 email to which Applicant referred, and Department Counsel's response on February 3, 2020, are included in the record as HX 3. In response, Department Counsel enclosed information from the Joint Personnel Adjudication System (JPAS) that showed Applicant's interim eligibility for a security clearance was withdrawn on January 27, 2020.

Findings of Fact

Under Guideline F, the Government alleged that in July 2000, Applicant filed a Chapter 7 bankruptcy petition that was discharged in October 2000 (SOR 1.a). It was also alleged that Applicant owed \$87,089 for 14 delinquent or past-due debts (SOR 1.b – 1.o). In response to the SOR, Applicant admitted SOR 1.a, but he denied the remaining allegations. He also provided a six-page excerpt from a September 25, 2019 credit report, as well as a one-page explanatory statement. (Answer)

Applicant's denials created issues of controverted fact as to SOR 1.b – 1.o, and required the Government to produce sufficient reliable information to establish those

allegations as facts. (Directive, E3.1.14) The information presented in GX 1, 2, and 4 satisfied that requirement. In addition, I make the following findings of fact.

Applicant is 59 years old and works for a defense contractor. He was hired by his employer in February 2017 and relocated to State A from State B, where he lived and worked following his retirement from the military. Applicant served in the United States Coast Guard from December 1984 until October 2013, when he retired as a Chief Warrant Officer 3 (CWO3) after a career in aviation assignments. Applicant also served in the United States Air Force between September 1978 and September 1982, and in the United States Army Reserve from October 1982 until December 1984. Applicant first received a security clearance in 1985. His certificate of discharge lists numerous personal awards and was authorized to wear several unit-based awards. (Answer; GX 1; AX A; Tr. 42)

Applicant has been married twice. The dates and circumstances of his first marriage were not listed in his e-QIP and not otherwise developed in the record. In July 2000, around the time he averred his first marriage ended, Applicant filed for Chapter 7 bankruptcy liquidation of the marital debts for which he was responsible. He was the sole debtor listed in that petition and his debts were discharged in October 2000. (Answer; GX 3; Tr. 39)

Applicant remarried in March 2001. As of the hearing, he and his second wife had been separated since September 2015. Her subsequent return to State B was one factor that has delayed finalization of a divorce. Since they separated, Applicant has paid about \$4,200 each month in spousal support. Applicant claims that one reason for the failure of their marriage was his wife's failure to manage their finances and pay bills on time as the principal manager of their joint finances. At all times during their marriage, Applicant was serving in the military but was able to be co-located with his wife wherever he was assigned. He believes his wife purposefully hid their unpaid debts from him and was able to stay ahead of collectors and collection notices because they moved every two or three years for his military postings. (Answer; GX 2; Tr. 47, 71 – 72)

Most of the debts documented herein are for student loans Applicant obtained between 2003, when he began studies for an associate's degree, and 2013, when he completed studies for a master's degree in business administration. While Applicant was a full-time student, his loans were in forbearance and in good standing, but still accruing interest. The debts alleged at SOR 1.c – 1.g and 1.i, totaling \$33,484, are for student loans that became delinquent in 2014 and 2015. Applicant consolidated those accounts in July 2018 and makes one \$400 student loan payment on the 4th of each month through automatic debit from his checking account. These accounts are in good standing. (Answer; GX 1 - 6; AX B; AX C; Tr. 39 – 40, 48 – 49, 73, 81)

Another delinquent student loan, with a balance due of \$47,168, is alleged at SOR 1.b and represents 47 percent of the total debt documented by the Government's information. Unlike the other six student loans discussed above, this account is listed as a joint account. At his October 9, 2018, subject interview (SI) with a government

investigator, Applicant averred this account had been consolidated with his other student loans. The investigator asked Applicant to provide documentation regarding his consolidated accounts. On October 16, 2018, Applicant provided documentation that supported his claims regarding SOR 1.c – 1.g and 1.i, but produced no information about SOR 1.b. At his hearing, Applicant again claimed the debt had been consolidated with the others; however, he eventually acknowledged that the debt was for a student loan he had co-signed for his estranged wife and that he likely had not included that account in his consolidation effort. As of May 2019, this account was still being reported on Applicant's credit report. Three days after his hearing, Applicant established a "temporary payment arrangement" with the law firm that holds the account for collection to begin resolving the \$47,282 balance due. Starting on February 21, 2020, Applicant was to make \$400 monthly payments through June 21, 2020. At that time, Applicant will be able to negotiate a further resolution of his debt. (Answer; GX 2; AX G; Tr. 52 – 62)

The debt alleged at SOR 1.h is for a past-due utility bill from State B that was referred for collection in February 2016. Applicant was unaware of the debt during his SI. At hearing, he testified that he was still unaware of what the debt was for; however, after the hearing, he was able to contact the creditor and make an initial nominal payment as a precursor to a negotiated settlement. (Answer; GX 2 – 6; AX I; Tr. 62)

The debts at SOR 1.j and 1.k represent two delinquent credit card accounts from the same lender that were charged off as business losses in January 2013 and December 2012, respectively. Applicant paid off the SOR 1.k account in 2018. The account at SOR 1.j is no longer collectable because the creditor charged it off as a business loss. Applicant incorrectly believed that charging off a debt meant it was no longer his responsibility. (Answer; GX 3 – 5; AX H; AX J; Tr. 62 – 66)

The debt at SOR 1.l is for a delinquent cell phone account. A 2017 credit report listed the debt as "in dispute." According to a May 2019 credit report, Applicant paid the debt through a negotiated settlement for less than the full amount past due. (GX4; GX 5; Tr. 66 – 67)

Applicant stated during his SI and at hearing that he had paid the debts at SOR 1.m – 1.o. Applicant provided only handwritten notes about those debts during his SI. At hearing, he relied on the absence of those debts in his credit report; however, after the hearing he presented information showing they have been resolved. (GX 2; GX 4 – 6; AX D; AX F; Tr. 67 – 68)

All of the debts at issue in this case involve accounts that were opened well before Applicant and his wife separated in 2015. All of the non-student loan debts became delinquent before the separation. As to his current finances, Applicant is in good standing with all of his monthly obligations. His monthly income derives from his defense contractor pay, his military retired pay, and a disability benefit from the Department of Veterans Affairs (VA). After withholdings for taxes and insurance, as well as for his monthly spousal support obligations, Applicant brings home about \$14,800. In 2018, he obtained a

mortgage to buy the house he had lived in as a renter beginning in 2017. Applicant is in the process of refinancing his mortgage at an annual interest rate about three percent lower than his current mortgage. He has not missed any mortgage payments. (Answer; GX 4 – 6; AX B – D; Tr. 40 – 41, 45, 47, 77, 80 – 81)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) 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 interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

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. (See Egan, 484 U.S. at 528, 531)

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. (See Egan; AG ¶ 2(b))

Analysis

Financial Considerations

The Government established that Applicant incurred delinquent or past-due debts, totaling \$87,089. Those debts arose after he was discharged of other debts in a previous Chapter 7 bankruptcy. 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.

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, available information shows that Applicant's bankruptcy occurred nearly 20 years ago under circumstances unrelated to his current financial concerns. The record also shows that only the debts alleged in SOR 1.b and 1.h remain unresolved. After the hearing, Applicant began the process of resolving both debts, which were not addressed when his marriage ended. The most significant debt at issue here is SOR 1.b. That debt arose when he co-signed a student loan for his estranged wife. Although Applicant had consolidated all of the student loans for which he was solely responsible, he had not taken any action to resolve SOR 1.b and could not explain why during his hearing. Nonetheless, the record evidence as a whole shows that his inattention to that debt was born of mistake rather than an unwillingness or inability to repay the debt. After the hearing, he began repayment through a law firm that holds that account for collection. Given the strength of Applicant's current financial resources, it is likely he will be able to

satisfy that debt in the foreseeable future. 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; and

(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.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The record evidence as a whole shows that Applicant's financial problems are an isolated segment of his background. His bankruptcy nearly 20 years ago has no connection to his more recent debts, most of which are student loans. The record also shows that his debts are being resolved to the best of his ability, and that they are unlikely to recur. Applicant did not incur his delinquent debts through misconduct or irresponsible financial practices and he has, with few exceptions, demonstrated good judgment in addressing his debts while meeting all of his other financial obligations. Further, balanced against the security concerns raised by Applicant's debts is a long record of incident-free access to classified information during a 35-year military career. A fair and commonsense assessment of the record evidence as a whole shows that Applicant has mitigated the security concerns about his financial problems.

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.o:	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