



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-00152
)
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his failure to address his financial problems, despite having adequate resources after the circumstances that caused his financial problems had been resolved for more than six years. He did not support his claims that he is financially stable, and he has been willfully ignorant of the need to resolve the debts attributed to him. His request for a security clearance eligibility is denied.

Statement of the Case

On August 13, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his work as a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it was clearly

consistent with the national interest for Applicant to continue to hold a security clearance.¹

On February 27, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on August 5, 2014, and I convened a hearing on September 10, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 4, which were admitted without objection. Applicant testified in his own behalf. DOHA received the transcript of hearing (Tr.) on September 25, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$31,491 for 12 delinquent or past-due debts (SOR 1.a - 1.i). In response, Applicant stated that he was aware of the debts alleged at SOR 1.b, 1.d, 1.e, and 1.i, because at one time he had accounts with those creditors. As to the remaining allegations, Applicant stated that he had no knowledge of any outstanding debts owed to those creditors. (Answer) I have interpreted his responses to be a general denial of any outstanding indebtedness whether he had an account with the creditors or not. (Tr. 10 - 12)

Having reviewed the entire record, I make the following findings of fact:

Applicant is 52 years old and works for an international business software corporation whose products are being used by DOD contractors in classified environments. He has worked for that company since 2008 and requires a clearance for access to job sites for customer support and marketing efforts. (Gx. 1; Gx. 2; Tr. 30)

Applicant and his wife have been married since April 1984. They have three adult children, ages 29, 23, and 21. The younger two still reside with Applicant and his wife at the home they have owned for about 15 years. Applicant's wife is a county employee and earns about \$18,000 annually. (Gx. 1; Tr. 35, 52)

In April 2008, their oldest child moved into her own apartment. However, she soon lost her job and was unemployed for about four months. Applicant supported her until she again found work. He estimates that he expended about \$1,500 each month for his daughter, who has been self-sufficient since about October 2008. (Answer; Gx. 1; Gx. 2; Tr. 31, 35)

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

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

In June 2008, Applicant's wife had emergency surgery and was out of work for about three months. Their medical insurance at the time did not fully cover the expenses for her operation, and she lost about \$5,000 in income because she had already used all of her sick leave. Among the remaining debts is a \$2,408 civil judgment obtained by a collection agency against Applicant in September 2011. It is the debt alleged at SOR 1.a. (Gx. 2; Gx. 3; Gx. 4; Tr. 32, 36 - 37)

Applicant also had to replace or repair his roof in 2008, at a cost of about \$5,000. To meet these unexpected expenses, which totaled about \$13,000, Applicant resorted to using credit cards, but claims he could not keep up with the minimum payments. Applicant's wife returned to work later in 2008, and he estimates that in 2009 their collective annual income was at least \$130,000. (Gx. 1; Gx. 2; Tr. 31 - 33)

When Applicant submitted his EQIP, he disclosed the debts alleged at SOR 1.b, 1.d, 1.e, and 1.i. He also explained the circumstances described, above, regarding his daughter, his wife, and the roof repairs. He further stated that he had been unable to make any affordable repayment arrangements with any of the creditors listed. (Gx. 1)

Applicant was interviewed in September 2013 by a Government investigator. When discussing Applicant's finances, the investigator presented information about numerous other debts reflected in an August 2013 credit report. Several of the creditors listed were collection agencies that Applicant either did not recognize or with whom he later testified he "had no affiliation." (Gx. 2; Tr. 32 - 33) During the interview, Applicant stated that he would contact some of the listed collection agencies to verify the accounts. He also stated that, because many of the debts had been charged off as business losses and there were no current demands for payment, he did not intend to pay them. As to the debts he disclosed in his EQIP, Applicant cited the fact that they would not work with him to set up reasonable repayment plans as the basis for his failure to pay off those accounts. (Gx. 2)

Applicant was also confronted in the September 2013 interview with the civil judgments alleged in SOR 1.a and 1.b. Those judgments are filed in the court for the county where Applicant has lived for 15 years. (Gx. 2) At hearing, he testified since the interview that he has not inquired about those judgments. He also has not followed through on his stated intentions to contact any of the creditors discussed in his interview. (Tr. 54)

Since 2009, Applicant's pay has increased. In 2013, he and his wife earned about \$190,000. Applicant claims no new debts and only one credit card, but could not explain a balance of \$31,228 for a credit card as reflected in his August 2013 credit report. A more recent credit report shows a \$39,000 balance for a credit card from the same company. In September 2013, Applicant estimated he has about \$500 remaining each month after expenses. (Gx. 2 - 4; Tr. 33, 44 - 48)

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). Decisions must also reflect consideration of the factors listed in ¶ 2(a) 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

³ See Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.⁶

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Since 2008, Applicant has owed between \$11,000, the total of the debts he disclosed in his EQIP, and \$31,491, the total of all of the delinquent debts attributed to him in the Government's credit reports. It is possible that some of the debts alleged may be duplicate entries generated by collection agencies as the debts are passed from one party to the next. But the total owed, in this case, is secondary to the fact that Applicant has been capable of repaying some or all of his original debt over the past six years, but has not tried to do so. Even after he was made aware of all of the debts attributable to him, he did nothing. Instead, he has taken the position that because a debt has been charged off, and unless someone is actively trying to collect from him, he will not repay such a debt. As to two civil judgments about which he was made aware by a Government investigator, Applicant has been willfully ignorant by not going to the local courthouse to inquire about those matters. The same can be said of his response to debts that he incurred but are now held by collection agencies. Rather than act with due diligence to determine what he owes, he has simply chosen to ignore his obligations. All of the foregoing supports application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

I have also considered the following pertinent 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;

⁶ See *Egan*; AG ¶ 2(b).

(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, or a death, divorce or separation), 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 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.

None of these mitigating conditions apply. As to AG ¶ 20(a), Applicant's financial problems are ongoing in view of his failure to take any action to resolve his debts. Although his financial problems arose through unexpected circumstances that are not likely to recur, his failure to act in response to his debts for the past six years, and decision that he will not pay debts because they have been charged off, preclude application of AG ¶ 20(b). For the same reasons, AG ¶¶ 20(c) and (d) do not apply as there has been no effort, in good faith or otherwise, to resolve his past-due obligations. Also, Applicant has chosen not to inquire about his civil judgments or several other debts attributable to him. He cannot now dispute their legitimacy. AG 20(e) does not apply. Finally, Applicant claimed his finances are sound but gave no information explaining a large credit card balance on his most recent credit report, or why he has only \$500 remaining each month despite earning nearly \$200,000 annually. AG ¶ 20(e) does not apply.

In summary, Applicant's failure to address his indebtedness, and the lack of information supporting his claims of financial well-being, sustain the Government's security concerns under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). I conclude that doubts remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

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: AGAINST APPLICANT

Subparagraphs 1.a - 1.l: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge