



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-06659
)	
Applicant for Security Clearance)	

Appearances

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

06/30/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by multiple past-due debts. His personal finances are improved, and he took reasonable and prompt action when his debts first arose through no fault of his own. His financial problems did not indicate poor judgment or a lack of trustworthiness, and he is not likely to incur new debts or other financial problems in the future. His request for a security clearance is granted.

Statement of the Case

On June 17, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for a security clearance required for his work as a defense contractor. Based on the results of the ensuing background investigation, which included Applicant's responses to interrogatories from

Department of Defense (DOD) adjudicators,¹ it could not be determined that it was clearly consistent with the national interest for Applicant to continue to hold a security clearance.²

On December 18, 2013, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline³ for financial considerations (Guideline F). On February 13, 2014, Applicant responded to the SOR (Answer). On February 21, 2014, he requested a decision without a hearing. On March 6, 2014, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) requested a hearing.⁴ (Hearing Exhibit (Hx.) 1)

The case was assigned to me on May 1, 2014. On May 28, 2014, I convened a hearing by video teleconference (VTC). Department Counsel appeared with me at DOHA headquarters and presented Government Exhibits (Gx.) 1 - 5. Applicant, appearing at a VTC site in a federal courthouse near his home, testified and presented Applicant's Exhibits (Ax.) A - I. I left the record open after the hearing to afford Applicant time to submit additional relevant information. (Tr. 56 - 57, 88 - 89) The record closed on June 4, 2014, when I received Applicant's 16-page post-hearing submission, identified as Ax. J.

At hearing, I overruled Applicant's objections (Hx. 2) to Gx. 3 - 5. All other documents submitted by the parties were admitted without objection. Department Counsel's waiver of objection to Ax. J is included as Hx. 4. DOHA received the hearing transcript (Tr.) on June 5, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$132,931 through seven past-due or delinquent debts (SOR 1.a - 1.g). Applicant denied, with explanations, all of the allegations except SOR 1.g, which he admitted with explanation. At hearing, Applicant updated the explanatory information in his Answer (Hx. 3), but his denials and admissions did not change. During the hearing, the Government acknowledged that the debt alleged at SOR 1.f was a duplicate of SOR 1.e. Accordingly, SOR 1.e is resolved for Applicant. (Tr. 57) Based on all available information, I make the following findings of fact.

¹ Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

³ 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).

⁴ See Directive, Enclosure 3, paragraph E3.1.7.

Applicant is 55 years old. For at least the past ten years he has worked as an aircraft maintenance mechanic. He has worked for his current employer since June 2011. Between August 2011 and February 2012, he was deployed by his employer to Iraq and Afghanistan in support of U.S. military missions.(Gx. 1; Gx. 2; Tr. 67 - 68)

Applicant was married from July 1986 until October 1992. That marriage produced three children, now ages 23, 26 and 31, who he raised as a single parent. A divorce decree ordered Applicant's ex-wife to pay him \$570 each month for child support; however, that obligation ended in 2008. Although Applicant has helped his children obtain student loans for their education, he has not been past due or delinquent on any financial obligations related to his support of his children. (Gx. 1; Tr. 42, 63 - 65)

Applicant remarried in August 2009. His wife works as an IT professional and has one child, age 20, who still depends on his mother and Applicant for support. Applicant and his wife together earn about \$135,00 annually, and they live in a house (A) she bought before they were married. (Answer; Hx. 3; Gx. 1; Gx. 2; Tr. 37, 43 - 44, 58, 84)

Applicant owns two other houses. In 1995, he bought a house (B) which he lived in with his children until 2010. In 2005, he bought a second house (C) for his mother to live in after she moved to the United States from England. Applicant cared for and supported his mother until 2009, when she passed away. Both B and C houses are now rental properties. (Answer; Hx. 3; Gx. 2; Tr. 30, 32 - 36)

In 2008, Applicant was supporting his ailing mother and two of his children, who were still in college. He earned about \$79,000 annually as a chief inspector for his previous employer. However, due to a loss of contracts, the company laid off a large portion of its workforce at Applicant's work site. Because of his experience and good work record, Applicant kept his job but only on a part-time basis. Thereafter, he worked only between 16 and 20 hours weekly. His average net monthly pay was about \$1,000. (Answer; Hx. 3; Gx. 2; Tr. 29 - 30, 38 - 39)

Applicant incurred financial hardship as a direct result of his reduction in pay. He fell behind on the mortgages for both B and C, as well as a \$10,000 equity loan used to fix up B for his mother. The past-due \$10,000 equity loan is alleged at SOR 1.a. Applicant made two payments in August 2012 and disputes the creditor's statement of the balance due. In April 2014, he reached an agreement with the creditor and is paying \$200 each month to resolve that debt. (Answer; Hx. 3; Gx. 3 - 5; Ax. A; Tr. 44 - 49)

Applicant was able to obtain loan modifications for the primary mortgages on both B and C; however, the \$98,000 debt alleged at SOR 1.b represents a past-due second mortgage on C. In August 2013, he settled with the lender and has since been paying \$250 each month to resolve what is now a \$10,000 debt. (Answer; Hx. 3; Tr. 49 - 51, 59 - 62)

The debts at SOR 1.c (Dish Network for \$200) and SOR 1.g (Public Storage for \$213) were paid in April and June 2012. (Answer; Hx. 3; Ax. C; Ax. G; Ax. J)

Applicant's loss of income led him at times to use credit cards to pay for ordinary expenses like gas and food. The debts at SOR 1.d (Chase Bank for \$5,880) and SOR 1.e (Chase Bank for \$7,953) represent delinquent credit card accounts attributed to Applicant in credit reports obtained by the Government. Applicant disputed the SOR 1.e account claiming he never had that account. Eventually, the creditor compromised and forgave the debt. As a result, an IRS Form 1099-C was issued attributing to Applicant as income for tax year 2013 the \$7,953 Chase claimed he owed them. Applicant listed that amount as required when he filed his 2013 income tax return. (Hx. 3; Ax. E; Ax. J; Tr. 53 - 57)

As to the SOR 1.d account, Applicant testified he kept trying to keep up with the required payments, but acknowledged he eventually defaulted sometime in 2009. Applicant satisfied his past-due balance on this account in February 2014. (Hx. 3; Ax. D; Tr. 52 - 53)

Applicant established that he tried to negotiate with his creditors for much of the past three years in an effort to resolve his debts. Now that Applicant's current finances are sound, he and his wife manage their finances responsibly and live within their means. After expenses, which include ongoing payments for the debts at SOR 1.a and 1.b, they have about \$4,700 remaining each month. He now has excellent credit and earns extra income from his rental properties. Applicant pays his taxes on time and has incurred no new financial obligations he cannot pay. (Gx. 2; Ax. H; Ax. I; Ax. J; Tr. 62 - 65)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ 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

⁵ See Directive. 6.3.

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 interest⁶ 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.⁷

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.⁸

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 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), the record shows Applicant has been unable, not unwilling, to repay his past-due debts.

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;

(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.

Applicant's financial problems arose in 2008 when his income was cut by more than 80 percent. At the time, he was a single father with two children in college. In 2005, he had taken on the responsibility of supporting his ailing mother, who died in 2009. During this time, Applicant tried with mixed results to work with his creditors. After he obtained better employment in 2010, he began to address his debts in earnest. Working with the mortgage lenders for his family residence and his mother's house (now earning income as a rental property), he obtained relief for his mortgage obligations through loan modifications. He is repaying two other debts through monthly payments agreed to by the creditors, and he is still disputing the balance due on another debt. He documented his disagreement by showing that he had made two previous payments that should have lowered the balance. Further, Applicant has remarried. He and his wife earn a good combined income that allows them to meet all of their monthly obligations and still produce a significant cash flow. They are responsible about their financial obligations, they live within their means, and they are not likely to incur such financial problems in the future.

All of the foregoing supports application of the mitigating conditions listed above. On balance, I conclude Applicant has mitigated the security concerns raised by the Government's information.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 55 years old and presumed to be a mature, responsible adult. Despite unexpected financial difficulties that arose through no fault of his own, Applicant was able to provide a college education for his children. When he was once again employed full time, he corrected most of his past-due financial obligations. His finances are sound because he exhibited good judgment and reliability in fulfilling his responsibilities. A fair and commonsense assessment of all available information shows that Applicant's finances no longer present an unacceptable security risk.

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.g:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge