



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-07179
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s debts arose from circumstances beyond his control. In response to his financial problems, Applicant acted promptly and reasonably to resolve his debts through a Chapter 13 bankruptcy repayment plan. His current finances are sound and he is not likely to incur such delinquencies in the future. The security concerns about his past debts are mitigated. His request for a security clearance is granted.

Statement of the Case

On February 15, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain or renew a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, which included his responses to interrogatories from Department of Defense (DOD)

adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.²

On October 30, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On January 14, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on February 10, 2015. The record closed on March 11, 2015, when Applicant timely submitted information in response to the FORM, and Department Counsel waived objections to admission of Applicant's information.⁵ The case was assigned to me on March 16, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$29,603 for a delinquent debt (SOR 1.a); and that a Chapter 13 bankruptcy petition he filed in February 2011 was discharged in February 2014 (SOR 1.b), but did not include the debt alleged at SOR 1.a. Applicant admitted filing a Chapter 13 petition, but denied owing the debt at SOR 1.a, because it was included in his bankruptcy petition. (Items 1 and 3). In addition to his admissions, I make the following findings of fact.

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since January 2012 as an information systems analyst. Applicant has worked in the information technology (IT) industry since about 1988, predominantly as a self-employed software developer. (FORM, Items 4 and 5)

Applicant and his wife have been married since October 1983. They have two children, ages 30 and 27. Applicant received a bachelor of science degree in December 1982 from a university in State A, where he lived and worked until 2008, when his father became terminally ill. In September 2008, he moved to State B to care for his father and help his mother until his father died in 2009.

While in State B, the effects of the economic downturn in that region made it difficult for Applicant to find work and he was forced to rely on personal credit accounts to make ends meet. In August 2009, after his father died and Applicant was able to sell his mother's house and relocate her to a condominium, he returned to State A and was able to find work, albeit, part-time or intermittent. Applicant and his wife began to

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 See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

⁵ See Directive, Enclosure 3, Section E3.1.7.

address their debts through debt consolidation and other measures. However, with his income still limited, they had trouble making progress on their debts. As he disclosed in his EQIP, Applicant and his wife filed for Chapter 13 bankruptcy protection on February 9, 2011. They declared \$813,279 in liabilities against \$474,967 in assets. A repayment plan was established whereby they would repay their debts over the next three years. They successfully completed the plan and their bankruptcy was discharged in February 2014. (FORM, Item 3; Item 4; Item 5; Item 8; Response to FORM)

The Government's allegation that the SOR 1.a debt was not included in his bankruptcy petition appears to be based on information in a credit report (FORM, Item 7 at 9) showing the account was charged off as a business loss rather than liquidated through bankruptcy. In response to the SOR, Applicant provided information from recent credit reports showing the SOR 1.a debt was included in the bankruptcy along with his other dischargeable debts. (FORM, Item 3) In the FORM, the Government took issue with Applicant's claim the debt was "cleared" as part of the Chapter 13 bankruptcy, and submitted that Applicant must "unequivocally" show the SOR 1.a debt was included in the bankruptcy before related security concerns can be mitigated. (FORM at 4 - 5)

Applicant's response to the FORM showed that the original SOR 1.a creditor sold the debt to a collection agency. Applicant's information was sufficient to show that the collection debt to which he referred in his response to the FORM was the same debt alleged in SOR 1.a. The collection debt was included in his bankruptcy petition for repayment. The bankruptcy trustee's final report and another credit report excerpt show the collection debt was resolved through the bankruptcy petition. All available information probative of the status of Applicant's SOR 1.a debt shows that the debt was resolved when Applicant successfully completed his Chapter 13 bankruptcy petition in February 2014.

As part of his response to DOD interrogatories, Applicant provided a personal financial statement (PFS) reflecting his monthly income and expenses as of July 2014. Applicant and his wife have a combined net income each month of almost \$10,000. After expenses, they have almost \$5,000 remaining each month. Applicant averred in his Answer that they have amassed a contingent savings fund equal to seven months' salary and are building their retirement savings with their available cash. (FORM, Items 3 and 5)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

⁶ Directive. 6.3.

(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 interest⁷ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.¹⁰ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.¹¹

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ Directive, E3.1.14.

⁹ Directive, E3.1.15.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Financial Considerations

Available information showed that Applicant and his wife incurred significant personal debt in 2008 and 2009 that required resolution through a Chapter 13 bankruptcy debt repayment plan that was concluded in 2014. These facts raised a security concern 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.

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*).

By contrast, the record also shows that Applicant's debts arose from circumstances beyond his control; namely, his unplanned relocation to tend to his dying father and help his mother after his father passed away. Applicant's relocation coincided with a problematic job market that hindered his ability to support himself. As a result, Applicant incurred debts with which he could not keep up. However, when Applicant returned home, he and his wife began their debt resolution efforts. His decision to seek Chapter 13 bankruptcy protection was reasonable under the circumstances. After resolving his debts in early 2014, Applicant's personal finances improved, and he now has significant savings and positive monthly cash flow. 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, 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

As to the allegation that Applicant did not include the SOR 1.a debt in his bankruptcy petition, the record shows that he did and that the debt was resolved through bankruptcy.

On balance, Applicant has mitigated the security concerns about his financial problems. In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). A fair and commonsense assessment of all available information bearing on Applicant's suitability for access to classified information supports a conclusion in favor of 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: FOR APPLICANT

Subparagraphs 1.a - 1.b: For Applicant

Conclusion

In light of all available information, 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