



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-07211
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro Se*

01/20/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s debts do not indicate poor judgment or a lack of trustworthiness. He has been proactive in resolving his financial problems, and has established a meaningful track record of repayment since 2011. His current finances are sound and do not present a security concern. His request for continued access to classified information is granted.

Statement of the Case

On March 1, 2012, 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 is clearly consistent with the national interest for Applicant to hold a security clearance.¹

On July 30, 2014, DOD adjudicators 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 November 18, 2014, and I convened a hearing on December 17, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibits (Ax.) A - E. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 5, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$82,207 for six delinquent or past-due debts (SOR 1.a - 1.f). Applicant admitted, with explanations, all of the allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 44 years old and was married for 18 years before he and his ex-wife divorced in November 2011. They have three children, ages 17, 14, and 12, who live with their mother. Applicant pays his ex-wife about \$1,000 each month in child support.

Applicant earned a bachelor's degree in computer science in 1997. Since about 1990, he has worked in jobs requiring a security clearance. (Gx. 1; Tr. 5, 8)

In about 2006, Applicant started a collection of antique firearms and other historic collectibles. To finance his purchases, he responded to credit card offers he received in the mail. The accounts alleged in SOR 1.a - 1.d are four of the credit accounts he opened. Although Applicant accrued high balances on each card, he was able to stay current in his monthly payments until sometime in 2010, when the combined principal and interest of each account surpassed his ability to pay. He started working with the creditors listed in SOR 1.a - 1.d. Since Between January 2011 and September 2011, he reached agreements with each creditor and has been making monthly payments of between \$200 and \$700 on those accounts to date. (Answer; Ax. A - D)

Applicant also owes two past-due medical bills for \$459 (SOR 1.e) and \$25 (SOR 1.f). He has the means to pay each one, but he has been unable to determine who

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).

holds each account. He was unaware of those debts until he received the Government's information in advance of hearing. (Answer; Tr. 40 - 41)

Applicant's current finances are sound. He earns about \$102,000 annually and estimates that after all of his monthly expenses, including his child support and debt payments, he has about \$1,500 remaining. He also has about \$60,000 in a retirement savings account. Applicant has been candid and forthcoming about his finances. In his EQIP, he disclosed the debts alleged in SOR 1.a - 1.d, as well as other debts that were already resolved. At hearing, Applicant disclosed that because of his divorce, he was unable to pay his taxes in 2011 and 2012. However, he filed his returns on time and immediately established repayment plans with the IRS whereby he pays \$150 each month to satisfy a total of \$14,000 in unpaid taxes for those two years. Those debts were never delinquent. (Gx. 1; Tr. 44 - 45)

Applicant has a good reputation in the community for volunteer work at his church. He also works with a local boy scout troop, and his reputation at work is solid. (Ax. E)

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.

³ See Directive. 6.3.

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

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.

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*).

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).

I have also concluded that the following AG ¶ 20 mitigating conditions apply:

(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;

(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.

Applicant became overextended on four credit cards he used to fund his collecting hobby. After staying current for a few years, he started falling behind on his monthly payments and his accounts were closed for non-payment. In late 2010 and early 2011, Applicant negotiated with the creditors listed in SOR 1.a - 1.d and was able to establish agreements for monthly payments. He has been repaying all four accounts in a substantial way and is likely to continue those efforts. As to SOR 1.e and 1.f, Applicant has the means to quickly pay them. Based on his record of debt resolution, he likely will do so when he obtains accurate information about who owns the debts. Applicant exhibited good judgment in his proactive response to his financial problems. His current finances are sound, as shown by a significant positive monthly cash flow after paying his debts and his regular expenses. Applicant has not incurred any new delinquent debts, and his current circumstances show his financial problems are not likely to recur.

In addition to evaluating the facts presented, and having applied 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). Applicant has been candid about his debts, and he has dealt with those difficulties in a way that reflects positively on his judgment and reliability. The information about his work in the community also supports a conclusion that Applicant is a mature, responsible individual who can be trusted with sensitive information. On balance, he has mitigated the security concerns raised by the Government's information.

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.f:	For Applicant

Conclusion

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