



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-07219
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred a large credit card debt after he lost a job in 2009. He has paid that debt and there is no other derogatory financial information in his background. The security concerns about Applicant’s finances are mitigated and his request for a security clearance is granted.

Statement of the Case

On March 13, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

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

On October 6, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² Applicant timely responded to the SOR and requested a decision without a hearing. On March 27, 2015, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on June 2, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. Applicant submitted additional information in response to the FORM. Department Counsel did not object to its admission and the record closed on June 12, 2015. The case was assigned to me on June 25, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$21,038 for a single delinquent credit card account (SOR 1.a). Applicant admitted the allegation and claimed that he has tried unsuccessfully since 2009 to resolve the debt with the original creditor. In addition to his admission, I make the following findings of fact.

Applicant is 38 years old and has been steadily employed, primarily in the information technology (IT) field, since at least 2001. Some of his jobs have been with state and local governments. Applicant and his wife have been married since September 2011.

In 2009, Applicant left a state IT job because of disputes with co-workers that resulted in him being harassed in the workplace. Thereafter, Applicant experienced financial problems even though he found work after leaving his state IT job. Among other problems, Applicant returned a motor vehicle because he could not keep up with the payments. He was able to resolve the remaining debt from that car loan. The debt alleged at SOR 1.a was disclosed by Applicant in is EQIP. It represents a credit card account that became delinquent around the time he left his job. This debt was charged off and sold to a collection agency in August 2010. (FORM, Items 1 - 4)

Applicant tried unsuccessfully to resolve the debt with the original creditor. When he answered the SOR, he was resigned to waiting for the statute of limitations on debt collection to expire in order to resolve the debt. However, when he received the FORM, it appears he realized that course of action was not acceptable within the context of assessing his suitability for a clearance. Further inquiries led him to the collection agency that held the account. Applicant settled his debt for about 15% of the original amount past due. The settlement agreement also advised Applicant that any forgiven debt (not otherwise specified in this record) may be reported to the IRS as as taxable income. (FORM, Items 1 and 2; Response to FORM)

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

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

Since 2010, Applicant and his wife have financed the purchase of new cars, at least one of which they have paid off. Aside from the charged off debt alleged at SOR 1.a, the only credit report provided in the FORM does not contain any derogatory financial information. It also did not reflect the collection agency through which Applicant resolved the debt. (FORM, Items 2 and 4; Response to FORM)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ 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:

(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 interest⁵ 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.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

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.⁸ A person who has access to such

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

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.⁹

Analysis

Financial Considerations

Available information supports the SOR allegation. The facts established herein raise 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*). As to AG 19(a), the proper focus is on Applicant's inability to pay the debt due to failed negotiations with the original creditor. Applicant's initial inclination to wait for the statute of limitations to run was, under the circumstances, understandable.

By contrast, 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;

(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; and

(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.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Applicant's debt problems arose through the unexpected loss of a job in 2009. He resolved other debts, such as a car loan he could not afford. But he was unable until recently to resolve his remaining delinquency, the debt alleged at SOR 1.a. Applicant has now resolved that debt and a recent credit report shows he generally has good credit and meets his obligations. The record evidence as a whole shows the security concerns about Applicant's finances are mitigated.

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). In that regard, I note Applicant's disclosure of his delinquent debt, his steady record of gainful employment, and his actions to resolve his financial problems. A fair and commonsense assessment of all available information shows that the doubts about Applicant's suitability for access to classified information are resolved.

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

Subparagraph 1.a: 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