



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-11346
)	
Applicant for Security Clearance)	

Appearances

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

12/10/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his delinquent student loans and other financial problems. His request for continued access to classified information is granted.

Statement of the Case

On May 18, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to classified information as required for his job with a defense contractor. After reviewing the completed background investigation, which include Applicant's responses to interrogatories issued by Department of Defense (DOD) adjudicators,¹ it could not be determined that it is

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

clearly consistent with the national interest for Applicant to have access to classified information.²

On November 12, 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 May 28, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on July 20, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on August 19, 2015, without any response to the FORM from Applicant. The case was assigned to me on September 18, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$34,438 for seven delinquent debts (SOR 1.a - 1.g). The debts alleged at SOR 1.a - 1.c are for past-due student loans totaling \$13,483, about 40 percent of the total debt at issue. Applicant admitted all but two (SOR 1.d and 1.f) of the SOR allegations. In denying those debts, he asserted they were fraudulently attributed to him and that they no longer appear in his credit history. (FORM, Item 1) In addition to his admissions, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor, where he has worked as an electronics technician since May 2012. He requires a security clearance for his job. From July 1998 until July 2002, Applicant served on active duty in the U.S. Army. After he was honorably discharged, he began working while attending school for an associate's degree in electronics, which he received in August 2005. Applicant financed his tuition through student loans. Thereafter, for personal reasons, he had to move to the state where he now lives and works. From 2006 until he was hired by his current employer, Applicant was underemployed and struggled to meet all of his financial obligations. (FORM, Items 1 - 3)

When Applicant submitted his EQIP, he disclosed his delinquent student loans and the credit card debt alleged at SOR 1.g. After being interviewed by a Government investigator in August 2012, Applicant realized the full extent of his debts. He also was made aware of the debts at SOR 1.d and 1.f, which he has disputed successfully. Those accounts were opened by a family member without his knowledge or consent. They are no longer attributable to him in recent credit reports. SOR 1.d and 1.f are resolved for the Applicant. (FORM, Items 2 - 5)

² Required by Executive Order 10865, as amended, and by the Directive.

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 six exhibits (Items 1 - 6) proffered in support of the Government's case.

One of the debts he disclosed in his EQIP, that is not alleged in the SOR, was a \$12,732 student loan debt. This debt represents the consolidation of the student loans alleged at SOR 1.a - 1.c. After his interview, Applicant enrolled in a student loan rehabilitation program. In response to DOD interrogatories, he showed that from February 2013 until December 2013, he made regular monthly payments on his loans and was able to bring his student loans current. Applicant now pays \$125 monthly to the new creditor for his consolidated student loan accounts. SOR 1.a - 1.c are resolved for the Applicant. (FORM, Items 2 and 3)

Applicant has a modest but positive cash flow each month after he pays his expenses, including his student loans. He does not appear to be spending irresponsibly or living beyond his means, and there is no indication that he has incurred any new unpaid debt since he was hired in 2012. (FORM, Items 3 - 5)

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. 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 interest⁶ 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

⁵ Directive. 6.3.

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

controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

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.⁹ 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.¹⁰

Analysis

Financial Considerations

Available information supports the allegations in the SOR. 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*).

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

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 incurred financial problems when he relocated in 2006 and was unable to find work that paid him enough to meet his then-existing obligations. After being hired for his current job in 2012 and being interviewed about his debts, Applicant took action to resolve his student loans and successfully dispute two other debts well before DOD issued the SOR. Of the seven debts alleged, he has resolved five of them. Although two of the past-due accounts remain outstanding, he is not required to be debt free as long as his financial problems do not reflect adversely on his judgment and reliability. There has been no financial misconduct or irresponsibility here. Applicant has a positive monthly cash flow and is making regular payments to his student loans, which comprise most of his remaining debt. Applicant has mitigated the security concerns under this guideline.

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). Applicant is an honorably discharged veteran, and he has been gainfully employed in his current position for three years. He was candid and forthright about his financial problems when he applied for a clearance, and he timely acted to resolve his financial problems as his resources allowed. A fair and commonsense assessment of the record evidence as a whole shows the doubts about Applicant's suitability for access to classified information have been satisfied.

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 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