



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 13-00735
)
)
 Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

05/15/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has not paid the fines and costs assessed from a recent conviction for driving without a valid driver’s license. As a result, a warrant for his arrest has been issued. Additionally, Applicant failed to timely file his federal and state income tax returns for multiple tax years. He also has failed to satisfactorily address resulting federal and state tax lien debts. He also has not resolved large child support arrearages and other past-due debts. His financial problems are continuing and it is likely he will continue to accrue debts he cannot pay. His request for a security clearance is denied.

Statement of the Case

On August 3, 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, 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 September 19, 2013, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines³ for personal conduct (Guideline E) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on March 10, 2014, and I convened a hearing on April 2, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection.⁴ Applicant testified but did not present any documentary exhibits. I left the record open to receive additional information. The record closed on April 15, 2014, when I received Applicant's timely post-hearing submission, which has been admitted without objection as Applicant's Exhibits (Ax.) A and B.⁵ DOHA received the transcript of hearing (Tr.) on April 17, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant did not file as required his federal or state tax returns for tax years 2006, 2007, 2009, and 2012 (SOR 1.a); and that he owed \$90,137 for 16 delinquent or past-due debts (SOR 1.b - 1.p). Under Guideline E, the Government alleged that in May 2013, he was charged with driving on a suspended license, to which he pleaded guilty and was fined. (SOR 2.a) Applicant admitted, with explanations, all of the SOR allegations. (Answer) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 43 years old and has worked as a professional civilian mariner since at least 1990. He has been married twice. His first marriage began in June 1996 and ended by divorce in December 1996. He married his second wife in July 1998. They separated in April 2004 and divorced in June 2008. They have one child, age 13, who lives with Applicant's ex-wife. When Applicant and his second wife separated, he agreed to pay about \$3,000 each month in spousal and child support. When the divorce was finalized, the court ordered Applicant to pay \$1,900 each month, of which \$900 was alimony. The alimony obligation ended in February 2009. (Gx. 2; Gx. 3; Tr. 40 - 41)

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 A copy of Department Counsel's letter forwarding Gx. 1 - 5 to Applicant in advance of hearing is included in the record as Hearing Exhibit (Hx.) 1. Also, an index listing each exhibit is included in the record as Hx. 2.

⁵ Emails documenting Applicant's post-hearing submission and Department Counsel's waiver of objection are included in the record as Hx. 3.

Applicant works as an electronics engineer and electrician aboard merchant marine vessels under contract to the U.S. military. His profession has always required he go to sea for at least four months at a time, after which he is ashore, or "off rotation" for four months. He is not paid during his time ashore; however, before 2012, he also received a vacation pay benefit of about \$12,000 when he was "off rotation." However, recent contract negotiations eliminated that part of mariners' compensation. Most of the time when he was "off rotation," Applicant would live off what he had saved from being at sea, as well as his vacation pay. Sometimes he would also collect unemployment. In his eQIP, he listed numerous vessels on which he has served as his workplaces since 1990. While at sea, Applicant has made as much as \$10,000 each month. In June 2008, when Applicant's divorce was finalized, he came home from a tour at sea, but found he did not have enough money to keep paying his alimony and child support obligations. As he fell behind on his payments, Applicant at times was jailed for contempt of the court-ordered payments and could only get out if he paid his arrearage. Further complicating his ability to pay his child support obligation was his conviction in August 2008 for violating a restraining order obtained by his ex-wife. His probation from 2008 until 2010 did not allow him to leave the United States for work, so he could only get work on coastal water salvage vessels that did not pay what he had been making aboard overseas merchant vessels. (Answer; Gx. 1; Gx. 3; Tr. 26 - 29, 38 - 46)

As of April 2014, Applicant owed \$33,912 in past-due child support. He is required to pay \$1,450 each month, of which \$450 is assigned to unpaid amounts. He testified that a hearing was pending to address his arrearages, and that he thought it likely he would again be jailed for non-payment. (Ax. A; Tr. 46 - 48)

After he and his wife separated, Applicant did not file his federal or state tax returns on time for 2006, 2007, 2009, or 2012. His returns for 2006 and 2007 were filed in 2009. His other returns were filed for him by the IRS in 2013. Applicant did not file his returns for 2006 and 2007 because expenses from his separation and his support obligations used up the money he needed to pay his taxes. After his divorce, his filing status changed and increased his tax obligations, which he could not pay. Rather than seek extensions or try to negotiate payment plans each year, Applicant decided not to file his returns. In 2011, the IRS filed a lien against Applicant to collect \$32,501 in unpaid taxes. Applicant established, however, that for the tax years in question, he owes \$18,102. The reduction is the result of lump sum payments he made after returning to sea in 2010. The lower amount also appears to be the result of an adjustment by the IRS regarding penalties and interest. In 2012, Applicant started a repayment plan with the IRS; however, at his hearing, he disclosed that he has not made a payment on that plan since January 2014. He intends to contact the IRS to renegotiate a payment plan. (Answer; Gx. 2; Ax. A; Tr. 31 - 35, 49 - 53)

Applicant's failure to file and pay his federal taxes also resulted in two state tax liens totaling \$18,958. He started a repayment plan in October 2013; however, he has also fallen behind on those payments. He is not currently making any state tax payments for past-due amounts. (Answer; Gx. 2; Tr. 53 - 54)

On November 15, 2012, Applicant was interviewed by a Government investigator as part of his background investigation. Most of the interview focused on his record of unpaid debts and other financial problems, including the loss of a home to foreclosure in 2008. It was also noted that he had managed to pay off some debts that are not alleged in the SOR. During the interview, he and the investigator reviewed his income and expenses, and determined that Applicant had a negative cash flow each month. When Applicant responded to DOD interrogatories in June 2013, he provided a personal financial statement (PFS) that showed he still had a negative monthly cash flow of about \$700. At his hearing, Applicant confirmed that his expenses still exceed his income each month. (Gx. 3; Tr. 61 - 63)

In late 2012, Applicant received a speeding ticket in State A. Early in 2013, he had to drive to State B to tend to his ailing mother. He mistakenly thought his attorney had resolved the fines and costs from the State A ticket. His failure to pay State A resulted in a suspension of his driver's license there. While in State B, he was pulled over for speeding and arrested for driving on a suspended license. He pleaded guilty and was assessed \$1,026 in fines and costs. He still has not paid those fines and understands that State B has issued a warrant for his arrest. (Answer; Gx. 2; Tr. 56 - 61)

Applicant has not obtained professional help with his financial problems. He has a close friend with experience in handling money who has helped him organize his debts and embark on a plan to address them. He manages to cover his basic monthly obligations, but still struggles to pay child support as required. While not working aboard ship, he works in a shipyard as an electrician. But he makes only about \$1,300 weekly. Applicant acknowledged at the hearing that, aside from his previous tax repayment plans, he has not paid or otherwise resolved any of the debts alleged in the SOR. (Gx. 2; Tr. 71)

Applicant has an excellent reputation among past and current co-workers and supervisors. They unanimously praise him for his expertise, hard work, professionalism, and reliability. (Ax. B)

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 (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:

⁶ See 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. 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.⁸

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.⁹

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations under this guideline. The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; AG ¶ 2(b).

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*); 19(c) (*a history of not meeting financial obligations*), and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). Except for tax year 2008, Applicant did not comply with his federal or state tax obligations between 2006 and 2012. He filed tax returns for 2006 and 2007 in 2009. His other outstanding returns were filed for him by the IRS. Despite having his federal tax debt significantly reduced, he has failed to pay as agreed under recent federal and state repayment plans. Applicant also has struggled to pay child support since 2008 and has been jailed for failing to pay court-ordered obligations. He has also accrued several medical and commercial debts that remain unpaid.

I have also considered the following pertinent AG ¶ 20 mitigating conditions:¹⁰

(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

¹⁰ The mitigating conditions at AG ¶¶ 20(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*) and 20(f) (*the affluence resulted from a legal source of income*) have not been considered as they are not pertinent to the facts and circumstances of this case.

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these mitigating conditions apply. Applicant's debts are recent, multiple, and continue unresolved. Although his 2008 divorce raises AG 20(b), he did not act responsibly when faced with his new tax status and his child support obligations. Applicant cites his loss of work after he was divorced, but his "off rotation" status and the associated income fluctuation have been a part of his personal and professional life since 1990. Applicant did not adjust to new obligations and manage his finances so he could meet them. He continues to struggle in this regard. He has even less income now that he cannot sail abroad, and his PFS has reflected a negative monthly cash flow since at least 2012. He has not sought professional financial counseling to resolve his finances. The organizational assistance he receives from his friend does not constitute financial counseling under this guideline. Applicant is credited with reducing his federal tax debt and making payments on other debts; however, his efforts are too sporadic to constitute a systematic and good-faith effort to overcome his financial problems.

Applicant's financial difficulties will not be resolved anytime soon. As of the hearing, he had stopped paying his tax debts and he was faced with additional jail time for non-payment of his child support obligations. On balance, Applicant did not mitigate the security concerns about his failure to comply with his tax obligations or pay his debts.

Personal Conduct

Available information is sufficient to support all of the SOR allegations under this guideline. The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's conviction for driving on a suspended license, without more, would not present a security concern. However, this event is another manifestation of the problems presented by his financial problems, discussed above. As with his finances, Applicant did not attend to a requirement that he pay an otherwise minor speeding ticket. As a result, the problem was compounded by the loss of his driving privileges. Similarly, he has now failed to pay the fines and costs from his conviction for driving on a suspended license and faces a warrant for his arrest. In addition to the general concern about his judgment and reliability expressed in AG ¶ 15, above, these facts also require application of the disqualifying condition at AG ¶ 15(c):

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Of the AG ¶ 16 mitigating conditions, none apply. Applicant's 2013 arrest is a continuance of ongoing poor judgment that underlies his financial problems. His arrest also remains a concern because it indicates an unwillingness or inability to comply with basic legal requirements and to follow court orders. On balance, the security concerns raised under this guideline remain.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines E and F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 43 years old and presumed to be a mature, responsible adult. He has a long history of professional sea service, and he has established a solid record for reliability and hard work among those with whom he has sailed since 1990. However, since at least 2006, Applicant has not managed his personal conduct or finances sufficiently. This has raised doubts, which Applicant's current circumstances have sustained, about his judgment and overall suitability for access to classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against 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:	AGAINST APPLICANT
Subparagraphs 1.a - p:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge