



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-01130
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

06/03/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems began after a period of unemployment and loss of overtime income. He sought financial management and debt repayment assistance in 2013, when he applied for a security clearance. He has been repaying his debts through a debt management plan since January 2014. His efforts to resolve his past-due debts reflect well on his judgment and reliability. The security concerns about his past debts are mitigated. His request for a security clearance is granted.

Statement of the Case

On January 21, 2013, 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, 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

On July 21, 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 February 26, 2015, Department Counsel issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on March 19, 2015. The record closed on April 20, 2015, when Applicant timely submitted information in response to the FORM, and Department Counsel waived objections to admission of Applicant's information.⁴ The case was assigned to me on May 4, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$60,704 for five delinquent debts (SOR 1.a - 1.e). The \$34,000 debt alleged at SOR 1.c, for a foreclosed second mortgage, constitutes 56 percent of the total debt alleged. Applicant admitted, with explanations, all of the SOR allegations. (FORM, Items 1 and 2) In addition to his admissions, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor whose work site at the time he responded to the SOR was at a military combat operations base overseas. He has worked for his current employer since December 2012 as an airframe maintenance technician. In 2009, Applicant completed training to be a long distance truck driver. From 2011 to 2013, he attended community college and has worked in the aviation industry since June 2008. (FORM, Item 4)

Applicant and his wife have been married since March 2006. They have one child, age 20 months. Applicant was previously married from April 2002 until obtaining a divorce in September 2004. There is no information in the record that shows Applicant is obligated to support his ex-wife financially. (FORM, Item 4)

When Applicant submitted his EQIP, he disclosed all of the debts alleged in the SOR. Credit reports obtained during the investigation and adjudication of Applicant's clearance suitability documented those debts, as well as numerous other debts, such as student loans, for which Applicant is in good standing. (FORM, Items 4 - 6)

Applicant also stated in his EQIP that his financial problems arose as a result of a six-month period of unemployment in 2009 and subsequent underemployment until he

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

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 seven documents (Items 1 - 7) proffered in support of the Government's case.

⁴ See Directive, Enclosure 3, Section E3.1.7.

could return to the aviation industry. His current job provides him a steady income with which he can address his debts. In November 2013, he contacted a debt management company to assist in consolidating his debts and establishing a debt repayment plan. In January 2014, after the debt management company contacted Applicant's creditors and negotiated settlement amounts as part of a debt management plan (DMP), Applicant started paying \$674 a month through a payroll allotment. He will satisfy about \$40,000 in debt by about 2018. Applicant has already resolved the debts at SOR 1.a, 1.d, and 1.e, and he has reduced the balance due for SOR 1.b by about \$3,000. (FORM, Items 2, 4 - 7; Response to FORM)

When Applicant was unemployed, he struggled to pay the mortgages on his house. He had a first mortgage of \$139,200 and a second mortgage of \$34,800. Applicant tried to arrange a mortgage modification when he started having trouble making ends meet, but the primary mortgage lender would not accommodate him. Applicant's mortgages were foreclosed in 2010 and the house was resold at auction. It does not appear from all of the information regarding the second mortgage that Applicant is still liable for that debt. (FORM, Items 2, 4 - 6; 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,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

⁵ Directive. 6.3.

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

security clearance for an applicant. Additionally, Department Counsel must prove 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 showed that in 2009, Applicant incurred delinquent and past-due personal debt that was not addressed until January 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 began struggling to pay his debts when he was laid off in 2009 and unemployed or underemployed until 2013. Once he had sufficient steady income, he retained a debt management company, negotiated settlements with his creditors, and implemented a four-year DMP that serves as a structured repayment approach. Applicant has been steadily and reliably paying his debts for the past 18 months. He has resolved three of the five debts alleged in the SOR, has made significant progress in repaying a fourth debt, and likely is no longer

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).

obligated to pay the largest of the five debts at issue, a foreclosed second mortgage. 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.

Available information does not show that Applicant accrued his indebtedness through misconduct or irresponsible management of his finances. 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.e: 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