



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-01651
)	
Applicant for Security Clearance)	

Appearances

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

12/31/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has resolved his past-due debts, which arose due to an unexpected loss of employment and subsequent employment at a significantly lower wage. Applicant did not intentionally falsify his answers to questions about his finances when he submitted his most recent security clearance application. His request for a security clearance is granted.

Statement of the Case

On November 15, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew 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 continue to hold a security clearance.¹

On June 2, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² 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 September 29, 2014, and I convened a hearing on October 21, 2014. Department Counsel presented Government Exhibits (Gx.) 1 and 2, which were admitted without objection.³ Applicant testified but did not present any documentary exhibits. I left the record open to receive additional information. The record closed on October 27, 2014, when I received Applicant's timely post-hearing submission, which has been admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received the transcript of hearing (Tr.) on November 19, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$23,927 for three delinquent debts that were referred for collection (SOR 1.a - 1.c). Under Guideline E, the Government alleged that Applicant intentionally made a false official statement when he failed to list in his EQIP the debts alleged in SOR 1.a - 1.c.

Applicant admitted the Guideline F allegations and denied the single Guideline E allegation; specifically, that he intended to make a false statement.⁴ (Answer) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 44 years old and works as a field service representative for a large defense contractor. He was first hired by that contractor in April 2002, but after completing work on a contract overseas in 2010, he was laid off for lack of work. After being unemployed for about four months, he found a position with the same company, but at a different location and for about \$25,000 less in annual pay. He now works in a position similar to the one from which he was laid off, but his income has increased only a little. (Answer; Gx. 1; Tr. 21, 28)

Applicant enlisted in the U.S. Air Force in May 1990. He was honorably discharged from active duty in May 1994, and continued his service in the Air Force

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).

³ A copy of Department Counsel's letter forwarding the Government's exhibits 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.

⁴ Tr. 10 - 12.

Reserve until 1999. In the Air Force, he was trained to perform maintenance and repair of aircraft electronics and environmental systems. He has continued that work as a defense contractor. Applicant has held a security clearance continuously since 1991. (Gx. 1; Tr. 23)

Before Applicant was laid off, his finances were sound and he was able to pay all of his debts. However, when he found himself unemployed, he used credit cards to help make ends meet. He testified that his financial problems became serious after he found lower-paying work. He continued having trouble meeting the regular obligations (mortgage, car loans, insurance, etc.) that were already in place when he was laid off. In 2011, he started trying to negotiate settlements of his past-due debts, including the accounts alleged in the SOR. In March 2014, he was able to resolve the SOR 1.c account for a personal computer purchase he had financed. He resolved the SOR 1.a credit card debt in May 2014. As of the hearing, he was still in negotiations with the SOR 1.b creditor. Applicant testified that he has been unable to resolve his debts any sooner because it takes time to save enough money to pay the lump-sum settlements required by each creditor. (Answer; Ax. A; Tr. 27 - 32)

Applicant's current finances are sound. He has incurred no new unpaid debts in the past four years, and he estimates he has about \$200 remaining each month after paying all of his regular monthly expenses. Applicant will have additional money remaining each month in 2015 after he finishes paying off his car loan. Applicant also has between \$40,000 and \$50,000 in his retirement savings account. (Tr. 35 - 39)

Applicant answered "no" to questions in Section 26 of his most recent EQIP that asked if, in the previous seven years, he (1) "had bills or debts turned over to a collection agency" or (2) "had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed." Given his credit history, Applicant should have disclosed the debts alleged at SOR 1.a - 1.c. In response to SOR 2.a, he denied intentionally withholding from his EQIP adverse information about his finances. He was not interviewed as part of the background investigation that ensued from this clearance application. Applicant acknowledged he was aware of his delinquent debts and should have answered "yes" to the questions at issue. He contends, however, that he completed the form in haste and, because he was working at a site abroad, poor internet connectivity made completing the form difficult. (Answer; Tr. 39 - 46)

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 (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a)

⁵ See Directive. 6.3.

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.

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. 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.⁷ 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.⁸

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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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:

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*). Applicant still owes the debt alleged at SOR 1.b, and his other two delinquencies were not resolved until earlier this year.

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

(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.

Both of these mitigating conditions apply. Applicant's financial problems started when he was laid off in 2010 and unemployed for several months. Thereafter, he was hired by the same employer for a job that paid significantly less than did his previous position. He struggled to repay credit card bills he accrued as well as obligations that already existed when he was laid off. He successfully negotiated settlements of two of the three delinquencies alleged in the SOR by saving enough money to offer sufficient lump sums to each creditor. His approach will be the same for the SOR 1.b creditor.

Applicant has not incurred any new unpaid debts and his finances are generally sound. As of the hearing, he had a modest positive monthly cash flow, and his available

funds after expenses will soon increase when he finishes paying off his car note. Applicant lives within his means, files and pays his taxes as required, and manages his finances in a prudent manner. He is not likely to experience similar financial problems in the future. On balance, Applicant mitigated the security concerns about his past-due debts.

Personal Conduct

The single allegation under this guideline raised a security concern about Applicant's truthfulness 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 did not list his past-due debts when he responded to pertinent questions in Section 26. He admits he omitted that information, but denied the gravamen of the allegation; namely, that he intended to mislead the Government through a false statement about information germane to his suitability for access to classified information. By denying the allegation, the burden remained on the Government to prove that Applicant acted intentionally in this regard. I conclude the record does not show that Applicant had such intent when he submitted his EQIP. Applicant clearly gave an incorrect response; however, simple mistake is not disqualifying. Applicant was not interviewed by a Government investigator even though a credit report was obtained about a month after the EQIP, showing the debts alleged. Applicant was not confronted with the discrepancy between his credit report and his EQIP answers, and he was not afforded an opportunity to explain his answers until he answered the SOR and testified at his hearing. I found his testimony on this issue credible, and conclude the Government did not meet its burden of proof under this guideline.

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 44 years old and presumed to be a mature, responsible adult. He has held a security clearance without incident for over 20 years through his military and defense contractor careers. His financial problems did not arise from misconduct or irresponsibility, and the underlying circumstances no longer exist. Applicant demonstrated sound judgment in resolving his debts. A fair and commonsense assessment of all available information shows Applicant's financial problems no longer pose an unacceptable security concern.

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.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the foregoing, 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