



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-02137
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

02/09/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s debts do not indicate poor judgment or a lack of trustworthiness. His current finances are sound, and the presence of unpaid debt does not present a security concern that Applicant will commit improper or illegal acts to obtain money. His request for continued access to classified information is granted.

Statement of the Case

Applicant first received a security clearance while serving on active duty in the U.S. Army between 2005 and 2007. He has continued to hold a clearance while employed with a defense contractor since 2009. On December 17, 2013, he submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew his eligibility for access to classified information. 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 hold a security clearance.¹ On July 18, 2014, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. I was assigned this case on November 18, 2014, and I convened a hearing on December 17, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified and proffered Applicant's Exhibits (Ax.) A and B. I also held the record open after the hearing to receive from Applicant additional relevant information. The record closed on January 12, 2015, when I received Ax. C - H. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 7, 2015.

Findings of Fact

Under Guideline F, the Government alleged that in July 1997, Applicant was discharged of debts totaling \$8,128 in response to a Chapter 7 bankruptcy petition filed in September 1996 (SOR 1.a). It was further alleged that Applicant owes \$199,687 for six delinquent or past-due debts (SOR 1.b - 1.g). Applicant admitted, with explanations, the allegations at SOR 1.a - 1.c, and 1.g. He denied with explanations the remaining allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 46 years old and has been married since June 1998. A previous marriage ended by divorce in June 1993 after four years of marriage. Applicant and his first wife had two children, now ages 24 and 20. Applicant has been separated from his second wife since April 2000. They separated because she is bipolar and was not taking her medications. She will not agree to a divorce. Applicant's second marriage produced one child, now age 19, for whom Applicant has consistently paid \$250 each month in support. He also has two children, ages 8 and 5, by a woman with whom he has been living in a committed relationship since 2003. (Gx. 1; Gx. 4; Tr. 63, 79)

Applicant attended college between 1987 and 1990 while participating in an Army National Guard program through which he earned a commission as an Army 2nd Lieutenant. In 1990, at the start of the first Gulf War, Applicant left school and reported for infantry officer training in preparation for deployment to Kuwait and Iraq. However, he was injured during training and never deployed. Applicant left active duty in 1991 with an honorable discharge. However, he was actually still available for recall as a

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 list of the Government's exhibits is included in the record as Hearing Exhibit (Hx.) 1.

member of the Individual Ready Reserve (IRR). In 2005, he was recalled for active duty for training and deployment to Iraq as part of Operation Iraqi Freedom (OIF). Applicant completed a 16-month combat deployment and received an honorable discharge in July 2007. His service as a combat infantry officer and battle captain in Iraq earned him a Meritorious Service Medal (MSM). In addition to the MSM, Applicant's Officer Evaluation Reports (OERs) reflect excellent and dedicated service throughout his active duty service. (Gx. 1; Gx. 4; Ax. C - E; Tr. 28 - 29, 48 - 52, 81)

After Applicant left active duty in 1991, he worked mainly as a car salesman and sales manager until he was recalled for OIF in 2005. After a brief period of unemployment in 2007, he again worked in sales until 2009, when he was hired as a systems engineer by his current employer. Applicant's performance since 2009 has been exemplary. (Gx. 1; Gx. 4; Ax. F)

When Applicant submitted his EQIP in 2013, he disclosed, as required, the debts alleged at SOR 1.b and SOR 1.c. Subsequent records obtained by Government investigators also showed that Applicant had filed for Chapter 7 bankruptcy in 1996, as alleged in SOR 1.a, and documented the other debts alleged in the SOR. Applicant discussed all of those matters with an investigator during a January 2014 subject interview. (Gx. 1; Gx. 2; Gx. 4)

In Applicant's 1996 bankruptcy petition, he declared liabilities of \$8,128 against assets of \$1,250. Applicant was discharged of his debts; however, in retrospect, he believes he received bad advice to file the petition subsequent to his divorce. He believes he could have paid his debts on his own without resorting to bankruptcy. (Answer; Gx. 4; Tr. 33)

Applicant also disclosed in his EQIP that he was contacted in 2013 by a collection agency seeking repayment of a delinquent student loan from Applicant's time in college up to 1990. Applicant avers he was previously unaware he owed any outstanding loan payments. Before he could verify its accuracy with the university, his company received an order to garnish his wages to satisfy a \$29,713 debt, alleged at SOR 1.b, for past-due loan payments. Applicant believes the original amount of his student loan was \$12,000. Through the garnishment, he is paying \$198 from each bi-weekly paycheck. (Answer; Gx. 1 - 4; Ax. A; Tr. 28 - 29, 31 - 33, 35, 40 - 41)

The debt at SOR 1.e is tangentially related to SOR 1.b. When Applicant contacted the university to inquire about the SOR 1.b debt, he was encouraged to use his Post-911 GI Bill benefits to finish his degree. Applicant took online courses between January and August 2012 and was reimbursed for his tuition and fees. However, the Defense Finance and Accounting Service (DFAS) overpaid him. In August 2013, Applicant paid \$650 and thought the account was settled. But he recently learned he owed an additional \$350, which he is able and willing to pay. (Answer; Gx. 1 - 4; Ax. B; Tr. 43 - 44)

The debt alleged at SOR 1.c is for a past-due cable television bill. Applicant has not used cable television in more than 12 years. He was not aware of such a debt in his credit history before his January 2014 subject interview. (Answer; Tr. 77)

The debt at SOR 1.f is for a past-due credit card with a balance of \$509. Applicant had the card when he was recalled to active duty in 2005. He submitted a request to the company to suspend his obligations for the account while he was deployed. He estimates the card balance when he deployed was about \$30 because he had paid down the balance. Applicant has tried to negotiate a repayment agreement that does not include interest and penalties added after he deployed. (Answer; Tr. 44 - 46)

Applicant denies the \$107 past-due medical account at SOR 1.g is his responsibility. It is likely for treatment of one of his adult children from his first marriage. Applicant was diagnosed in 2012 with diabetes and has been hospitalized once for that condition in 2013. He is aware of all his bills and required payments related to his illness and knows the SOR 1.g debt is not related. (Answer; Gx. 4; Tr. 46 - 47)

The largest debt attributable to Applicant is the \$168,000 child support arrearage alleged at SOR 1.c. When Applicant and his first wife divorced in 1993, he was ordered to pay \$987 in monthly child support for his two oldest children. He agreed to make those payments until they were 23 years old because he wanted them to attend college. Around 1995, during a six-month period of unemployment, Applicant's ex-wife agreed he could reduce his monthly payments to about \$500 until he was back on his feet. However, when she learned Applicant had met another woman whom he intended to marry, she went to court and obtained a judgment in debt for \$9,000 in unpaid support. That amount was added on to Applicant's original child support obligation. Since 1995, Applicant has paid \$100 each month toward the arrearage plus the original \$987 ordered in 1993. Applicant's payments are taken from his paycheck every two weeks and he has not missed more than 10 payments over the past 20 years; however, the amount of the arrearage has been growing over that period because of accruing interest and penalties. (Answer; Gx. 1; Gx. 4; Ax. A; Ax. G; Tr. 30, 35 - 38, 52 - 63)

Applicant and his first wife have been trying to negotiate a reasonable settlement of the arrearage. She is interested in resolving the matter because when her youngest child turns 23 and the order for \$987 in monthly payments expires in 2017, Applicant will only be obligated to pay \$100 each month on the arrearage. (Answer; Tr. 64 - 65)

Applicant's current finances are sound and he lives within his means. He earns about \$70,000 annually. When combined with his partner's income, the household finances show about \$3,600 remaining each month after paying all expenses, including garnishments and child support. (Ax. H; Tr. 34, 65 - 71)

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 (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:

(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. 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.⁶

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

⁴ See Directive. 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. 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*).

I also conclude that the record supports application of the following 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;

(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

(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 likely does not owe the debts alleged at SOR 1.d and 1.g. The amount of the debt at SOR 1.f is in question. Applicant is repaying through garnishment the

⁷ See *Egan*; AG ¶ 2(b).

student loan debt at SOR 1.b, but it does not appear he ever refused to pay the debt. Rather, the creditor instituted garnishment proceedings before Applicant could verify the debt or negotiate with the school to repay it. As to his child support debt alleged at SOR 1.c, although it continues to grow through interest and penalties, he has been paying as ordered for almost 20 years. All available information probative of SOR 1.c shows Applicant has nearly always paid his child support. As to the DFAS debt at SOR 1.e, Applicant had already made a good-faith effort to repay the debt in 2013, but he did not know that the debt was actually higher.

As shown by a recent budget he submitted, Applicant and his partner have sufficient income with which to repay his debts and avoid future financial problems. They have a significant positive monthly cash flow after expenses, and they have incurred no new unpaid debts. It is probable that Applicant will be able to negotiate a feasible solution to his child support arrearage at or before the end of his base monthly obligations in 2017. Applicant's current finances are sound and bear no resemblance to his financial posture when he filed Chapter 7 bankruptcy in 1996.

Applicant's failure to pay his outstanding debts is not an accurate reflection of his judgment and reliability, and there is little likelihood he would resort to improper or illegal conduct to resolve his debts. In addition to evaluating the facts presented, and having applied 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 has been candid about his debts, and he has dealt with his financial difficulties in a way that reflects positively on his judgment and reliability. The information about his work performance and his military service also supports a conclusion that Applicant is a mature, responsible individual who can be trusted with sensitive information. On balance, he has mitigated the security concerns raised by the Government's information.

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

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