



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-02439
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/16/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by the presence of unresolved debts. His request for a security clearance is granted.

Statement of the Case

On February 5, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, which included Applicant's responses to interrogatories from Department of Defense (DOD) adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.²

¹ See DOD Directive 5220.6 (Directive), as amended, Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On July 29, 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 March 26, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on April 8, 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 May 8, 2015, after Applicant submitted additional information. Department Counsel did not object to the admission of Applicant's additional information. The case was assigned to me on May 15, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$16,899 for eight delinquent or past-due debts (SOR 1.a - 1.h). Of the total debt alleged, eighty percent is comprised of a \$13,471 unpaid cell phone bill (SOR 1.h). Applicant admitted SOR 1.a - 1.d, 1.f, and 1.h. He also averred that he has paid or resolved SOR 1.a - 1.c, and that SOR 1.f is so old he has been unable to get enough information to pay the debt. Applicant denied SOR 1.e on grounds that he paid the debt and is now disputing it with the creditor. Applicant also denied SOR 1.g as a duplicate of 1.c. (FORM, Items 1 and 2) In addition to his admissions, I make the following findings of fact.

Applicant is 33 years old. At the time he submitted his EQIP, he was employed by a defense contractor as a training specialist working in Iraq in a position which requires a security clearance. Applicant first received a security clearance in 2003 while serving in engineering battalions in the U.S. Army. Applicant enlisted in the Army in 1999 and was honorably discharged as a staff sergeant in April 2011. While on active duty, he deployed to Afghanistan from May 2009 until January 2010. He deployed to Iraq from September 2003 until September 2004, from September 2006 until December 2007, and between February and April 2009. (FORM, Items 2 and 3)

When Applicant submitted his 2013 EQIP, he disclosed the debts alleged at SOR 1.a, 1.d - 1.f, and 1.h. Most of his debts arose when he was deploying on combat missions or changing duty stations. In support of the SOR, the Government presented a March 2015 credit report that shows only the SOR 1.h debt as still due. The credit report otherwise tends to support Applicant's claims that he has paid or resolved most of his other debts. (FORM, Items 2 - 4)

As to SOR 1.h, Applicant stated in his EQIP and in response to the SOR⁵ that he opened a cell phone account for a fellow soldier in 2007. Once the account was established, and shortly before Applicant was due to deploy in 2009, Applicant and the

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 four exhibits (Items 1 - 4) proffered in support of the Government's case.

⁵ It does not appear from this record that Applicant was interviewed during his background investigation.

other soldier together spoke with a customer service representative from the phone company to transfer the account to the other soldier and remove Applicant's name from the account. Thereafter, Applicant thought the account was no longer his responsibility. Applicant has disputed the unpaid bill with the phone company and through credit reporting services. He has not been contacted about this debt since 2010. Applicant otherwise avers that his finances are sound and that he will resolve his remaining debts to the best of his ability. (FORM, Items 2 - 4; 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,⁶ 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 interest⁷ 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 controverted facts alleged in the SOR.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

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

⁶ Directive, 6.3.

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

⁸ Directive, E3.1.14.

⁹ Directive, E3.1.15.

them to have access to protected information.¹⁰ 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.¹¹

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*). Applicant accrued significant debt before 2010. However, the record now shows that only one of the debts alleged is still unresolved. The Government's credit report reflects the SOR 1.h debt as the only matter yet unresolved. That exhibit also contains positive information about Applicant's finances, such as a car loan and other loans that have been paid and closed as required.

The record 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;

(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

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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.

The credit report shows most of Applicant's past-due debts have been resolved and that they arose, not from misconduct or irresponsible spending, but from unusual circumstances. Available information also shows one of the debts is a duplicate entry and that Applicant has a basis for disputing two others. Although it would be helpful to have more supporting information about the SOR 1.h debt, given the record as a whole, the presence of this unresolved debt is not disqualifying. On balance, I conclude the security concerns about Applicant's finances are mitigated.

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). Of note is Applicant's long record of service in combat missions between 2003 and 2010. Applicant has continued to support U.S. military efforts in Iraq as a civilian. A fair and commonsense assessment of all available information shows that he has sufficiently addressed the Government's concerns about his remaining debts.

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.h: 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