



Applicant for Security Clearance

Decision

On March 28, 2015, 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 July 21, 2015, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on September 30, 2015, and had 30 days from the date of receipt to submit additional information in response to the FORM. Applicant did not submit additional information within the time allotted. The record closed on October 30, 2015, and the case was assigned to me on November 12, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$19,383 for ten delinquent or past-due accounts (SOR 1.a - 1.j). The \$12,333 debt alleged at SOR 1.j is for the remainder after resale of a car that was repossessed in 2012. It comprises about 64 percent of the total delinquent debt listed. Applicant denied all but one (SOR 1.f) of the allegations on grounds that he either was the victim of identity theft or that some of the debts alleged were actually attributable to his late father, whose name is similar to his. (FORM, Items 1 and 2) In addition to the facts established by his admission, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor, where he has worked since May 2012. He worked in a previous capacity for two different federal contractors from October 2001 until April 2006. Concurrently, he was a federal employee from February 1992 until April 2006. At that time, he started his own small business, which was his sole source of income until May 2012, when the business failed due to the poor economy. This is his first application for a security clearance. (FORM, Item 3)

Applicant is a high school graduate. He and his wife have been married since April 1997, and they have two children, ages 21 and 14. (FORM, Item 3)

When he submitted his EQIP, Applicant disclosed the debts alleged at SOR 1.f and 1.j. SOR 1.j is for an unpaid cell phone account. Available information shows only that this account was closed, not that it has been paid, as Applicant claims. SOR 1.f is for a debt that arose when his car was repossessed and sold at auction. He bought the car for \$27,000 in March 2006, but defaulted on the loan in 2009. After the car was sold at auction, Applicant was still responsible for \$12,333 as the amount yet needed to satisfy the loan. In January 2014, Applicant reached a settlement with the law firm engaged to collect the delinquency. A garnishment of Applicant's wages had been established, but would be lifted if Applicant paid the firm \$10,000. Applicant did not

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 eight exhibits (Items 1 - 8) proffered in support of the Government's case. The exhibit numbers listed on page 1 of the FORM for Applicant's Answer to the SOR (Item 3) and for his EQIP (Item 4) should be reversed based on the way those enclosures were actually presented. Applicant's Answer will be cited herein as Item 4, and the EQIP as Item 3.

present any information showing that he acted pursuant to the settlement. (FORM, Items 3 - 6)

A credit report obtained during Applicant's background investigation documented all of the debts alleged in the SOR. On October 10, 2012, Applicant was interviewed about his debts by a Government investigator. He stated at that time that he did not recognize some of the debts listed in his credit report, but he did not mention the possibility that the debts were either attributable to his late father, or that they were the result of identity theft. Applicant first suggested that possibility when he responded to the SOR. One of the credit reports presented by the Government shows that Applicant filed an identity theft alert with one of the major credit reporting companies in June 2014. The reason stated for the alert was that Applicant did not recognize companies that were doing credit checks on him.

As for Applicant's late father, they shared the same first and last names, and they had the same middle initial. Applicant's father died intestate and Applicant was assigned as administrator of the estate. However, none of the credit reports suggest, and Applicant's information does not show, that any of the debts were actually attributable to his late father. Applicant's theory in this regard was first raised in response to the SOR, and he has not presented any information that shows he has challenged the validity of any of those debts. (FORM, Items 5 and 8)

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. 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

⁴ Directive. 6.3.

clearly consistent with the national interest⁵ 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.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

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.⁸ 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.⁹

Analysis

Financial Considerations

Applicant denied all but one of the allegations in the SOR. Nonetheless, the Government met its burden of production in support of 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*). In response to the Government's information, it was incumbent on Applicant to produce information sufficient to refute or mitigate the facts established against him. His response to the SOR did not support his claims of

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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

payment or other action to resolve his past-due debts. In particular, I note the documents he submitted regarding his settlement of the \$12,333 debt at SOR 1.f. That information does not clearly establish actual payment pursuant to the agreed upon settlement amount. He did not submit any additional information in response to the FORM.

I have also considered the following pertinent 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Available information shows that Applicant's debt problems continue to be unresolved, and must be considered as recent. AG ¶ 20(a) does not apply.

Although some of his financial difficulty arose from a failed small business, it was Applicant's choice to leave a steady job with a federal agency and embark on that venture. He did not establish that he has acted to pay or otherwise resolve his delinquent debts since his company failed. Applicant also did not support his affirmative defense that the debts listed in the SOR were either his late father's obligations or the result of identity theft. AG ¶ 20(b) does not apply.

Applicant also did not present any evidence showing he has sought financial counseling or other professional assistance to resolve his debts and improve his financial circumstances. AG ¶ 20(c) does not apply.

Applicant claimed that he has resolved the SOR 1.f and 1.j debts, but the information he submitted does not fully support his claims. It is clear he agreed to a settlement of SOR 1.f, but available information, to which he had ample opportunity to contribute, does not establish actual resolution of the debt. He did not otherwise

address any of the other debts other than to claim they are not his responsibility. AG ¶¶ 20(d) and (e) do not apply. On balance, Applicant did not meet his burden of producing sufficient evidence to refute the SOR allegations or to mitigate the security concerns about his financial problems.

In addition to evaluating the facts and applying 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 is presumed to be a mature, responsible father and husband. Nonetheless, it was incumbent on him to present sufficient information in support of his response to the Government's case. Without such information, doubts remain about his suitability for access to classified information. Because protection of the national interest is the principal focus 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 - 1.j: Against Applicant

Conclusion

In light of all available information, 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