



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-05321
)
 Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not meet his burden of producing information that mitigates the security concerns about his past-due or delinquent debts. His request for continued access to classified information is denied.

Statement of the Case

On April 8, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew the eligibility for access to classified information, required as part of his employment with a defense contractor, that he was first granted in May 2009. 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 continue to have access to classified information.¹

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

On December 24, 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 August 18, 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 3, 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 or object to the admissibility of the Government's information within the time allotted, and the record closed on October 3, 2015. The case was assigned to me on March 15, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$22,456 for 14 delinquent or past-due accounts (SOR 1.a - 1.n). The debts at SOR 1.m (the \$7,714 remainder after resale of a car repossession) and 1.n (a \$9,000 delinquent child support account) comprise 75 percent of the total debt listed in the SOR. In his Answer, Applicant admitted all but one (SOR 1.n) of the allegations and provided explanatory comments. (FORM, Items 1 and 2) In addition to the facts established by his admissions to the 13 remaining allegations, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor, where he has worked since April 2008. He and his wife have been married since April 2010 and they have two children, ages 5 and 2. Applicant also has a 10-year-old child by a former girlfriend, to whom he is obligated to pay child support. (FORM, Items 3 and 7)

When Applicant submitted his EQIP, he disclosed the debts alleged at SOR 1.a - 1.m. The credit bureau reports obtained during Applicant's background investigation and subsequent adjudication further document these debts.

Just before his personal subject interview (PSI) in May 2014, Applicant was notified that his ex-girlfriend was claiming he had not paid a year's worth of child support. That debt is alleged at SOR 1.n. Applicant disclosed the debt to the investigator at his PSI, and stated his intent to contest that debt. He repeated that plan in response to the SOR. Aside from Applicant's disclosure at the PSI, the debt at SOR 1.n is not otherwise corroborated by the Government's information. (FORM, Items 2 and 7)

Applicant also stated in his PSI and in response to the SOR that he would take action to resolve his debts by contacting a debt management firm. However, he has not produced any information to show that he has acted on that plan in the past two years. (FORM, Items 2 and 7)

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

In October 2010, Applicant notified his work site security officer that he had voluntarily returned a car after failing to make loan payments because his wife was out of work. The car in question was a convertible he had given to his ex-girlfriend (the mother of his oldest child) in 2009, with the expectation that she would make payments on the car loan. She did not. The debt alleged at SOR 1.m is for the remainder after resale of that vehicle. The debt remains unresolved. (FORM, Items 2 - 4, and 7)

Applicant attributed his financial problems to his wife's loss of employment and to her pregnancy. The record does not provide any other details about when his wife was unemployed or to which pregnancy (2010 or 2013) he was referring. However, at his PSI in 2014, Applicant stated that his wife was back to work. Despite the addition of her income at that time, there is no indication that Applicant has acted to pay or otherwise resolve any of the debts alleged in the SOR. (FORM, Items 3 and 7)

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 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

⁴ Directive. 6.3.

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

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

Available information is sufficient to support the SOR allegations at SOR 1.a - 1.m. Applicant disclosed them in his EQIP, and they are documented in two credit reports and in the summary of Applicant's May 2014 PSI. As to SOR 1.n, that allegation is based solely on Applicant's PSI disclosure that he was notified of his ex-girlfriend's claim that he had not paid child support for a year. Applicant denied the claim then and he has denied it again in response to the SOR. His denial of SOR 1.n leaves the burden on the Government to present reliable information in support of that controverted issue of fact. This debt is not otherwise documented in the Government's information. Accordingly, I find for Applicant as to SOR 1.n. Nonetheless, the facts established by Applicant's admissions and by the information contained in the FORM reasonably 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*). By contrast, I have considered the following pertinent AG ¶ 20 mitigating conditions:

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).

(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.

Applicant did not present any information that would support application of any of these mitigating conditions. His financial problems are current, in that his debts have not been paid or otherwise resolved. He has not established that any of the debts are not his, he has not made any payments on his debts, and he has not sought any financial counseling or other professional help for his financial problems. Applicant did not sufficiently explain or document his claim that his debts arose because of his wife's unemployment or pregnancy. Further, he has not acted to resolve his debts since at least May 2014, when his wife was again employed. Available information does not show that he has acted responsibly under the circumstances.

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 credited with candidly disclosing his financial problems as required. Nonetheless, he had the burden of presenting sufficient information or refute to mitigate the resulting security concerns. Without such information, unresolved doubts are established about his continued 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.m: Against Applicant

Subparagraph 1.n: For 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 security clearance is revoked.

MATTHEW E. MALONE
Administrative Judge