



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



In the matter of:)	
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)	
[NAME REDACTED])	ISCR Case No. 14-05337
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2016

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 access to classified information is denied.

Statement of the Case

On March 20, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to classified information required as part of his employment with a defense contractor. This is his first request for a clearance. 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 have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by the Directive.

On February 5, 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 29, 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 1, 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 2, 2015, and the case was assigned to me on November 12, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$26,847 for ten delinquent or past-due accounts (SOR 1.a - 1.j). The debt alleged at SOR 1.j is a delinquent student loan account for \$12,213, or about 45 percent of the total delinquent debt listed. The debts at SOR 1.c - 1.i, totaling \$9,117 (34 percent of the total debt listed) are for unpaid medical bills that resulted from the deductible portions of his medical insurance. Applicant admitted all but one (SOR 1.i) of the allegations. (FORM, Items 1 and 2) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor, where he has worked since February 2014. He and his wife have been married since August 2008. They have an eight-year-old child together, and she has a nine-year-old child from before their marriage.

After Applicant graduated from high school in 2001, he attended a vocational and technical school until December 2002, when he received certification in automotive technologies. In August 2003, he completed similar training with a national automotive company. From August 2003 until February 2014, except for a period of self-employment between January and April 2011, Applicant worked for various employers as a diesel engine technician and mechanic. His current job is his first with a defense contractor. (FORM, Items 3 and 6)

In his clearance application, Applicant disclosed the debts alleged at SOR 1.a, 1.c, 1.d - 1.f, 1.h, and 1.i. All of the debts alleged in the SOR are documented in two credit reports obtained during his background investigation, and he discussed those debts during a personal subject interview with a Government investigator on April 21, 2014. During that interview, he stated his intent to enter into repayment plans with some of his creditors by May 2014. (FORM, Items 3 - 6)

Applicant attributed his financial problems to being the sole income earner for his family until recently. In his current position, he earns about \$42,000 annually, and his

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 six exhibits (Items 1 - 6) proffered in support of the Government's case.

wife is now working outside the home as a nurse. She earns about \$30,000 annually. He has not incurred new unpaid debts since 2014, and he is able to meet all of his current financial obligations. (FORM, Item 6)

Applicant also cited, as a factor contributing to his financial problems, his failed attempt to start his own diesel repair company in January 2011. His attempt failed in just four months due to poor economic conditions; however, he has been gainfully employed since April 2011. The debt alleged at SOR 1.a is for the remainder after resale of a truck that was repossessed in 2011. Applicant fell two months behind on his payments while he was self-employed, and was told by the lender that he owed \$4,000 after the truck was sold at auction. The debt remains unresolved. (FORM, Items 3 - 6)

The debt at SOR 1.b is for an overdrawn bank account that Applicant closed in April 2011, before he moved to the state where he currently lives. He has not resolved that debt. Applicant denied the \$88 medical debt at SOR 1.i, claiming it has been paid. However, that debt is still listed as an active collection account in the most recent credit report available. As for the remaining medical debts, he did not produce any information showing that he has paid or otherwise resolved them. Applicant stated in his subject interview that in December 2012, he enlisted the services of a credit repair firm to verify and clean up his credit history. But he did not provide any documentation related to that effort or any results produced by the firm. (FORM, Items 3, 5, and 6)

The student loan debt alleged at SOR 1.j is related to Applicant's tuition for his technical training between 2001 and 2003. He struggled to make his monthly payments and his loans were referred for collection. In 2014, Applicant took advantage of an opportunity to consolidate his delinquent loans and he made timely payments for nine months to bring them current. He discussed this effort during his April 2014 interview, but he did not otherwise document his claim. Department Counsel acknowledged that Applicant's most recent credit report shows a new, current account that correlates to the student loan account in SOR 1.j. I find that the debt at SOR 1.j is no longer delinquent. (FORM at 2; FORM, Item 5)

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

⁴ Directive. 6.3.

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 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

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

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).

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. He did not submit any documents in response to the SOR or the FORM. Although his student loans are once again current, the basis for that finding came from an interpretation of the Government's exhibit (FORM, Item 5). Applicant did not show that he is still paying that debt on a regular basis, and he did not show that he is trying to resolve any of his other debts. He has carried delinquencies for several years, and it is understandable that he may not have been able to meet his obligations for reasons beyond his control. However, he and his wife now earn a good living, yet it does not appear that he is engaged in any systematic effort to resolve his past-due debts.

In summary, Applicant did not mitigate the security concerns raised by the Government's information. 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 has been gainfully employed for most of his adult life, and he is presumed to be a mature, responsible father and husband. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, 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.i:	Against Applicant
Subparagraph 1.j:	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 request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge