



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-01350

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not carry his burden of producing information that mitigates the security concerns raised by multiple filings of bankruptcy petitions between 2004 and 2015. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On November 5, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for access to classified information required as part of his employment with a defense contractor. 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 DOD Directive 5220.6 (Directive).

On August 27, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).² Applicant timely responded to the SOR and requested a decision without a hearing. On November 30, 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 December 5, 2015, but did not submit any additional information within the 30 days allowed. The record closed on January 4, 2016, and the case was assigned to me on April 1, 2016.

Findings of Fact

Under Guideline F, the Government alleged that in October 2004, Applicant filed for Chapter 7 bankruptcy discharge of his debts, which occurred in January 2005 (SOR 1.a); that in February 2005, Applicant filed a Chapter 13 bankruptcy petition that was dismissed in July 2007 for failure to make required filings (SOR 1.b); that in July 2010, Applicant filed a Chapter 13 bankruptcy petition that was dismissed in May 2012 for failure to make required payments (SOR 1.c); and that in May 2015, Applicant filed for Chapter 7 bankruptcy discharge of his debts, which occurred in August 2015. In his Answer, Applicant admitted, with explanations, all of the allegations. (FORM, Item 1) The SOR allegations are further supported by the Government's documents at FORM, Items 6 - 11. In addition to the facts thus established, I make the following findings of fact.

Applicant is a 53-year-old employee of a defense contractor, where he has worked since October 2012. He served in the U.S. Army on active duty and in the Army Reserve from 1982 until 1991. Applicant has been steadily employed in a variety of jobs since April 1990. (FORM, Item 5)

Applicant and his wife have been married since May 1992. They have two children, ages 22 and 15. The younger child was born with, and has always required treatment for, several significant medical conditions. Applicant's wife was injured in 2006 in a natural gas explosion at their home. She was unable to work for an unspecified length of time because of her injuries, but was again working when Applicant was interviewed for his clearance in December 2012. (FORM, Items 5 and 11)

During the December 2012 interview, Applicant discussed his then most recent bankruptcy petition. He cited his child's health issues and his wife's previous inability to earn income as factors contributing to his financial problems. Nonetheless, he told the investigator that, at that time he was able to meet all of his financial obligations, in part, because his wife had been able to return to work. (FORM, Item 11)

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 11 exhibits (Items 1 - 11) proffered in support of the Government's case. Additionally, the SOR originally included allegations of fact at SOR 2.a and 2.b that might raise security concerns under Guideline E (Personal Conduct). However, at FORM page 3, Department Counsel amended the SOR by withdrawing both Guideline E allegations. Accordingly, only the Guideline F security concerns have been examined in this case.

In response to the SOR, Applicant attributed his most recent bankruptcy filing to his child's ongoing medical problems, and to his wife's medical problems that have arisen since his 2012 interview, and which have rendered her unable to work. She is receiving unspecified long-term disability benefits that constitute a reduction in her income. Applicant estimates he spends about \$13,000 annually in medical insurance and deductible costs. (FORM, Item 4)

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 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

⁴ Directive. 6.3.

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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

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 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*). This record presents reasonable security concerns about Applicant's repeated use of bankruptcy protection to resolve his financial problems.

By contrast, I also have considered the following pertinent AG ¶ 20 mitigating conditions apply:

(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;

⁸ See *Egan*, 484 U.S. at 528, 531.

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

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these mitigating conditions apply. The fact that he again was discharged of his debts through bankruptcy within the past 12 months shows that Applicant's financial problems are recent and ongoing. Although he can claim that his financial problems are caused or exacerbated by factors beyond his control, repeated resort to bankruptcy protection does not constitute reasonable action under the circumstances, or a good-faith effort to resolve his debts. There is no indication in this record that Applicant sought financial counseling or other professional assistance, that he tried to negotiate with any of his creditors, or that he has actually made any direct payments to his creditors. Finally, Applicant did not present information about his current finances that would support a finding that, after his most recent discharge of debts, he is unlikely to again be unable to meet his regular financial obligations. On balance, Applicant has not mitigated the security concerns about his finances.

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). I have considered Applicant's Army service, his steady record of employment, and the difficult circumstances with which he has been presented. Nonetheless, Applicant did not carry his burden of presenting sufficient information to refute the SOR allegations or to mitigate the security concerns established by the Government's information. 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.d:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraphs 2.a - 2.b:	Withdrawn

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