



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



In the matter of:)	
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)	
[NAME REDACTED])	ISCR Case No. 10-07119
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

February 3, 2012

Decision

MALONE, Matthew E., Administrative Judge:

Applicant was discharged of his debts in 2002 after he and his wife divorced. He more recently accrued unpaid debts in excess of \$21,000. He recently paid some of those debts, but did not present sufficient information to mitigate the security concerns about his financial problems. Based upon a review of the pleadings and exhibits, Applicant’s request for a security clearance is denied.

On November 18, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to allow Applicant access to classified information. On September 1, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which

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

raise security concerns addressed at Guideline F (Financial Considerations) of the adjudicative guidelines (AG).²

On October 12, 2011, Applicant responded to the SOR and requested a decision without a hearing. On November 3, 2011, Department Counsel issued a File of Relevant Material (FORM)³ in support of the Government's preliminary decision. Applicant received the FORM on November 14, 2011, and was given 30 days to file a response to the FORM. Applicant timely responded to the FORM by submitting a four-page memorandum and eight enclosed exhibits. Department Counsel waived objection to Applicant's response to the FORM and it has been included in the record. The case was assigned to me on January 23, 2012.

Findings of Fact

Under Guideline F, the Government alleged that Applicant filed for Chapter 7 bankruptcy protection in October 2001 and that his debts were later⁴ discharged through that petition (SOR 1.u). It was also alleged that Applicant owes to 20 different creditors approximately \$21,971 in delinquent debt. (SOR 1.a - 1.t). In response to the SOR (FORM, Item 2), he denied SOR 1.k and admitted the remaining allegations. His response to the SOR did not include any explanatory information. In addition to the facts established through his admissions, I have made the following findings of fact.

Applicant is 49 years old and works for a defense contractor as a field service technician, a position that requires a security clearance. He has worked for his current employer since November 2009. From about August 2005 until he was hired for his current position, Applicant worked mostly as an electrician for several different employers. In August 2006, he was laid off due to lack of work, and he was unemployed until he found work as a laborer six months later. (FORM, Item 5)

Applicant served in the U.S. Navy from September 1984 until March 2004. He retired as a first class petty officer (E-6). There is no indication that he has held a security clearance before. (*Id.*)

Applicant and his wife have been married since June 1998. He was also married from May 1984 until May 1998, when he and his first wife were divorced. They had been separated since July 1997. Applicant has two adult children and three adult stepchildren. (*Id.*) The debt alleged at SOR 1.k was for \$1,730 in unpaid child support.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government's case.

⁴ SOR 1.u alleges that Applicant's bankruptcy was filed in October 2001, and that it was discharged in January 2001. Neither party addressed this in their submissions, so I am left to assume that the bankruptcy was discharged in January 2002.

Applicant averred that he has never been past-due in his support obligations, and that the amount alleged was actually a refund for overpayment. He also presented information that showed the account is closed and is being deleted from his credit history. (Response to FORM)

When Applicant submitted his eQIP, he disclosed several delinquent accounts, including collection accounts, charged-off accounts, and two car repossessions totaling approximately \$17,719. (FORM, Item 5) Credit reports obtained during his background investigation attributed to Applicant the debts alleged in the SOR. (FORM, Items 6 and 7) In response to the FORM, Applicant established that he had paid or otherwise resolved the debts at SOR 1.b, 1.d - 1.f, 1.l., 1.m, 1.n, 1.o, 1.q, 1.s, and 1.t. Those debts totaled \$2,416. Applicant repaid the debt at SOR 1.o in July 2010. The others were resolved after September 2011. (Response to FORM)

As to his remaining debts, Applicant averred that he has made arrangements to make payments on the debts at SOR 1.a, 1.c, 1.g, 1.h, 1.j, 1.p, 1.r, and 1.t, starting between January 2012 and March 2012. As to SOR 1.l, Applicant averred that he started repaying that debt in December 2011 through \$75 monthly payments. He further stated that SOR 1.l arose after Applicant voluntarily had his car repossessed due to chronic mechanical problems, which the car dealer failed to resolve. The SOR 1.l debt accrued in July 2009. (Response to FORM; FORM, Item 6) Applicant did not provide any corroborating information regarding the terms of any arrangements he has made with his creditors, nor did he document any current payments under those arrangements.

Applicant filed his bankruptcy petition in response to a bankruptcy petition filed by his ex-wife after they divorced. The record does not show how much debt was discharged. As to Applicant's more recent debts, he averred that the debts at SOR 1.d, 1.e, and 1.s arose after he was injured in an auto accident in November 2009. He had to wait until subsequent legal proceedings were complete before he paid those debts. Applicant attributed the debts at SOR 1.f - 1.h, 1.j, 1.p, and 1.r, which total \$10,669 to a job lay-off that occurred in 2006. (Response to FORM; 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,⁵ 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

⁵ Directive. 6.3.

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 interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national 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.⁸

Analysis

Financial Considerations

The Government presented information that showed Applicant owes at least \$17,000 in delinquent debt consisting of 20 accounts that have either been referred for collection or charged off as business losses. Applicant's financial problems arose even after he had previous debts discharged in bankruptcy about 10 years ago. This information raises a security concern about Applicant's finances 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

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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, the Government's information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19 (c) (*a history of not meeting financial obligations*).

Of the mitigating conditions listed at AG ¶ 20, the following pertain to these facts and circumstances:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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);

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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's information does not fully support any of the AG ¶ 20 mitigating conditions. AG ¶ 20(a) does not apply. His financial problems are numerous and recent, in that he still owes more than nine debts that have been delinquent for several years. Also, AG ¶ 20(b) does not apply, because Applicant did not show how his six month period of unemployment more than five years ago, or his car accident in 2009, kept him from taking action to resolve his debts until after he answered the SOR. Further, he did not support his claims of scheduled repayment arrangements with his creditors. For these same reasons, his actions in 2011 to start paying his debts do not constitute a systematic, good-faith effort to resolve his debts. Thus, AG ¶ 20(d) does not apply.

Applicant admitted all but one of the SOR allegations. Thus, he was burdened with producing information sufficient to mitigate or extenuate the security concerns about his finances. For AG ¶ 20(c) to apply, the record must at least contain information about the current state of his finances. He did not submit any information, in response to

either the SOR or the FORM, about his income, expenses, budget, professional financial advice he has received, or other matters that might show his financial problems will not recur.

Applicant is entitled to some benefit under AG ¶ 20(e), because he established that the child support debt at SOR 1.k was not properly attributable to him. I also conclude in Applicant's favor the debts at SOR 1.b, 1.d - 1.f, 1.l, 1.m, 1.n, 1.o, 1.q, 1.s, and 1.t. However, with SOR 1.k, they comprise only about 18% of the total debt attributable to him. Without additional persuasive information, which Applicant did not provide, and in view of his failure to more timely address his debts, I conclude Applicant has not mitigated the security concerns raised by the Government's information about his finances.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 49 years old and presumed to be a mature, responsible adult. He served for 20 years in the U.S. Navy and, generally, has been gainfully employed since his retirement in 2004. However, the record does not contain sufficient information to support application of the AG ¶ 2(a) factors in a way that would overcome the doubts, established by this record, about Applicant's suitability for access to classified information. Because protection of the national interest is paramount in these determinations, those doubts must be resolved for the Government.

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.b, 1.d - 1.f, 1.k - 1.o, 1.q, 1.s	For Applicant
Subparagraphs 1.a, 1.c, 1.g - 1.j, 1.p, 1.r 1.t, 1.u	Against Applicant

Conclusion

In light of all of the foregoing, 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