



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-03936
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

05/23/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by multiple past-due debts. His personal financial management and his recent actions to resolve his debts show he is not likely to incur new debts or other financial problems in the future. His request for a security clearance is granted.

Statement of the Case

On June 23, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for a security clearance required for his work as a defense contractor. Based on the results of the ensuing background investigation, which included Applicant's responses to interrogatories from

Department of Defense (DOD) adjudicators,¹ it could not be determined that it was clearly consistent with the national interest for Applicant to continue to hold a security clearance.²

On July 25, 2013, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline³ for financial considerations (Guideline F). On July 31, 2013, Applicant responded to the SOR (Answer) and requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) subsequently issued a File of Relevant Material (FORM) in support of the SOR.⁴ On February 17, 2014, Applicant responded, through an attorney, to the FORM. In his response, he amended his Answer and provided additional information. He also requested a hearing, and DOHA agreed to convert his case for hearing.

The case was assigned to me on March 21, 2014, and I convened a hearing on April 2, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 10, which were admitted without objection. Applicant, appearing *pro se*, testified and presented Applicant's Exhibits (Ax.) A and B, which were admitted without objection. Five witnesses also testified on Applicant's behalf.

Additionally, Department Counsel waived objection to the admission of Applicant's response to the FORM. It is admitted as Hx. 3 and contains Attachments A, B, C, D1 - D6, and E. DOHA received the transcript of hearing (Tr.) on April 17, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$72,972 through 20 past-due or delinquent debts (SOR 1.a - 1.t). Applicant denied, with explanations, the allegations at SOR 1.b, 1.k, and 1.r. He admitted, with explanations, the remaining SOR allegations. (Answer; Hx. 3) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 37 years old. He maintains and installs telephone and computer cable systems as a defense contractor employee at a U.S. military installation. He has worked in that capacity since June 2008, albeit, for three different companies. He has worked for his current employer since March 2009, and has a reputation for honesty and professionalism in the workplace. His supervisor and the Government's technical

¹ Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

³ 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).

⁴ See Directive, Enclosure 3, Section E3.1.7.

representative each testified that Applicant is an excellent worker on whom they rely heavily. Both witnesses were aware of the Government's concerns about Applicant's finances. (Gx. 1; Tr. 81 - 90)

Applicant has been married twice. His first marriage began in January 1996 and produced one child, now age 16, who lives with Applicant. His first wife left him and their child in September 1998, and Applicant has not seen her since. He was unable to obtain a divorce until January 2013, just before Applicant and his current wife were married. They have a blended family of eight. Applicant has three children (one from his first marriage, one from before his current marriage, and one with his second wife). His wife has three children from before their marriage. All of their children are minors living in Applicant's marital residence. (Gx. 1; Tr. 73 - 74)

Applicant served in the U.S. Army from October 1995 until October 1998. He was administratively separated in lieu of a court martial after being away without leave (AWOL) on two occasions for a total of 71 days. Applicant testified that he felt he had to stay home to take care of his then-infant child after his first wife abandoned them. (Gx. 1; Gx. 2; Tr. 45 - 48)

Since about March 2000, Applicant has been steadily employed, first as a traffic signal technician, then as an electrician's assistant. In the latter work, he had no health insurance from about August 2007 until June 2008, when he began work as a defense contractor. In May 2008, Applicant lost his job due to the economic downturn and was unemployed for four months. To get medical treatment, he often went to hospital emergency rooms. The debts alleged at SOR 1.b - 1.l, 1.o and 1.q are unpaid bills totaling about \$15,900 for many of those emergency room visits. Applicant and his wife have tried to work with the collection agencies holding those accounts, but have been unable to afford the payment terms demanded of them. (Gx. 1; Gx. 2; Tr. 60 - 62)

In 2009, Applicant was hurt in a motorcycle accident. Medical insurance covered the costs of treatment, but he was unable to work and could not make his rent payments on time. He broke his lease early and, as alleged in SOR 1.a, still owes about \$6,300 through a civil judgment filed against him in January 2012. (Gx. 5; Tr. 58 - 59)

In December 2007, Applicant financed the purchase of a used car through Wachovia Bank. His mother co-signed the loan, and Applicant paid the loan as required until sometime in 2009. After Wells Fargo acquired Wachovia, a clean car title was mistakenly sent to Applicant's mother. Thereafter, Wells Fargo stopped accepting Applicant's payments and wrote the loan off as a business loss. Applicant still has the car, but he has not been able to reach a settlement or other resolution with the lender. According to credit reports, Applicant owes in excess of \$18,000 for the rest of the loan. He is adamant that this debt is a mistake, and that he did not miss any payments. (Hx. 3; Gx. 1; Gx. 2; Gx. 4; Gx. 5; Tr. 63 - 68)

Applicant attended a vocational school from September 2006 until December 2010. He was unable to complete his studies because, after switching his major, he

could not sign up for all of his prerequisite courses. Applicant financed his tuition with a combination of federally-subsidized and private student loans. He has consolidated his loans and, in August 2013, was granted an economic hardship forbearance that expires in August 2014. Applicant disagrees with the total student loan debt alleged in SOR 1.t of \$30,484. He insists the actual balance due after consolidation is no more than \$17,000. (Hx. 3; Gx. 5; Ax. A; Tr. 68 - 70)

Beginning in 2012, Applicant and his wife have been trying to negotiate with their creditors and resolve their debts. They were able to pay the \$196 credit card debt alleged at SOR 1.p, and initially, they paid credit correction firms to clean up their credit history. But they soon realized that those firms would not help resolve their past-due debts. Despite direct contact with their creditors, Applicant has not been able to afford the payments demanded or identify the exact amounts owed. (Hx. 3; Tr. 75 - 77)

In 2013, Applicant began working with his pastor and other parishioners to improve how he manages his personal finances and to devise ways of resolving his debts. Applicant resisted suggestions that he seek bankruptcy protection. However, in October 2013, his wife was hospitalized for surgery at a time when she was not covered by his medical insurance. They both have been covered since January 2014, but as a result of her uninsured hospitalization, they incurred a \$57,000 debt they cannot pay. They immediately began the process of filing a Chapter 13 petition that was pending approval as of this hearing. The filing process included a financial counseling course, which Applicant completed in January 2014. Under the proposed plan, which Applicant's attorney is confident will be approved by the time this decision is issued, Applicant pays \$456 monthly for the next 60 months. As of the hearing, he had already made two payments through payroll allotments. All available information about his bankruptcy petition shows his payment plan has been established. Except for his student loans, which are still in forbearance, all of the unpaid debts alleged in the SOR are included in the bankruptcy petition. (Hx. 3; Gx. 6 - 10; Ax. B; Ax. C; Tr. 37 - 38, 51 - 56, 70, 75, 92 - 99, 104 - 109)

Applicant and his wife have not incurred any new unpaid debts since 2012. They file their tax returns on time, and they live well within their means. They have enough money remaining each month after expenses, including the Chapter 13 payments, to avoid incurring unplanned debts, and will have enough to make payments on his student loans beginning in August 2014. Applicant has been entrusted by his pastor with the keys to the church and is held in high esteem for his devotion to the parish and for his reliability and hard work as a parish volunteer. (Tr. 56 - 57, 70, 72 - 73)

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 (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a)

⁵ See Directive. 6.3.

of the 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 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 be able to 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 in favor of the Government.⁸

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*; AG ¶ 2(b).

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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*) As to AG ¶ 19(a), the record shows Applicant has been unable, not unwilling, to repay his past-due debts.

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; and

(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.

The mitigating conditions at AG ¶ 20(a) and (b) apply. Applicant's circumstances have changed for the better since he began working for his current employer and since he remarried. He has not incurred new debts through mismanagement of his finances or irresponsible conduct. However, his wife's hospitalization presented a debt that was beyond their control as it was unplanned and not covered by medical insurance. Nonetheless, he and his wife are now repaying his debts through Chapter 13 bankruptcy. He now has a positive monthly cash flow, and will be able to start repaying

his student loans later this year without compromising his financial health. More important, he and his wife now have medical insurance, the absence of which has been the cause of much of his debt. The delinquent car loan appears to be a mistake that was not caused by Applicant, who made payments as required until there was a mix-up by the lender. As to counseling, Applicant has received help from his church in the form of personal and financial counseling, and his current finances are sound. The record as a whole shows that Applicant is now resolving his debts and manages his finances so as to reduce the likelihood his financial problems will recur. On balance, I conclude he has mitigated the security concerns raised by his past-due debts.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 37 years old and presumed to be a mature, responsible adult. Although he left the Army under adverse circumstances, he has been gainfully employed for all but four months since at least March 2000. He is responsible for supporting a large blended family, and all indications are that he has acted responsibly in this regard. Applicant has a good reputation at work, and he is an upstanding member of his church. A fair and commonsense assessment of all available information shows that Applicant's finances no longer present an unacceptable security risk.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.t:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge