



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-07162
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

05/16/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his finances. Despite having the resources to do so, Applicant has not acted to resolve several longstanding delinquencies. Clearance is denied.

Statement of the Case

On September 30, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his work as an employee of a federal contractor. After reviewing the results of the ensuing background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's access

to classified information.¹ On November 19, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline² for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on February 12, 2013, and I convened a hearing on March 5, 2013. DOHA received the transcript of hearing (Tr.) on March 20, 2013.

Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection. Applicant testified and proffered four exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - D. He also presented his daughter-in-law, his son, and his work supervisor as witnesses.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$35,455 in past-due debts for 12 accounts specified in SOR 1.a - 1.l. Applicant denied, with explanation, all of the allegations except for SOR 1.i, 1.j, and 1.l. (Answer) Applicant's admissions are incorporated herein as facts. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

The creditors listed in SOR 1.a - 1.h, and 1.k, which Applicant denied, are collection agencies. In denying those allegations, he stated that each referred to "an 8 year old debt [he] had but [that] was sold over and over again to debt buyers." He also stated in his response, "While I do feel a personal responsibility to pay the companies that I incurred those debts to that is not possible, but I do not feel any responsibility to pay companies I don't even know simply because they say I don't (sic)." I have inferred from these statements that Applicant admits owing the original debts.

Applicant is 60 years old and employed as an electronics technician by a defense contractor in a position that requires a security clearance. He was hired for that job in April 2001 after being unemployed for the previous six months. Applicant served in the U.S. Air Force from 1971 until retiring as a technical sergeant in 1991. He has held a security clearance continuously and without incident since 2005.

Applicant's wife, also a 20-year veteran of the Air Force, and to whom he was married for 28 years, passed away in November 2000. Together they had two children, now adults. Since about 2004, Applicant has provided financial support in various forms to his children and his elderly parents. He paid for repairs to his son's vehicle so his son could continue to make his long commute to work. He paid for repairs to his parents' air conditioning. He also supported his daughter for several months after she lost her job,

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

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).

and he co-signed a student loan for her. The student loan became delinquent, as alleged in SOR 1.i and 1.j. However, his daughter has been able to resolve the debts. Applicant estimates he still gives her about \$1,000 each year in response to unforeseen expenses. (Answer; Gx. 1; Ax. B; Tr. 66)

Applicant claims he fell behind on his credit cards and other obligations because he had been helping his children and his parents, and because his late wife had always handled the finances. Credit reports indicate that his credit card delinquencies began around 2004 or 2005. He avers that he was not fully aware of the scope of his debt until he was asked to submit his eQIP in 2010, in which he disclosed most of the debts alleged in the SOR. He discussed each of his delinquent debts when he was interviewed by a Government investigator in October 2010. Also around this time, his supervisor advised Applicant to take action to resolve his debts. (Answer; Gx. 1; Gx. 2; Gx. 3; Tr. 33 - 34, 68 - 71, 105)

Applicant has not taken any action to resolve his debts. His daughter resolved the student loans alleged at SOR 1.i and 1.j. In 2008, his daughter-in-law, who is married to Applicant's son, resolved the home improvement store debt alleged at SOR 1.i. That account was shared by Applicant and his son, but had become delinquent and was hindering his son's ability to finance the purchase of their house. In 2010, Applicant's daughter-in-law also offered to help him contact his creditors, including collection agencies, to try to resolve his debts. Applicant testified that, in 2010, he thought he would likely lose his clearance because of his financial problems and, so, had no incentive to try to resolve his debts. In hindsight, however, he realizes he should have taken some of the offers he received from collection agencies to settle his debts for less than he owed. (Answer; Ax. B; Tr. 56 - 61, 71 - 73, 78 - 86)

Applicant has been steadily employed by his current company since 2001. His monthly income, including about \$1,200 in monthly retired pay, is about \$4,400. After expenses, he estimates he has about \$2,000 remaining each month. There is no indication he is still using credit cards or accruing new debts he cannot pay. (Gx. 1; Tr. 62 - 65)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ 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) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

³ See Directive. 6.3.

(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 interest⁴ 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.⁵

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.⁶

Analysis

Financial Considerations

Available information supports all of the SOR allegations. It also shows that the debts alleged at SOR 1.i, 1.j and 1.l have been resolved by his daughter and daughter-in-law. However, Applicant still owes at least \$18,159 for the other nine debts alleged.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

Coupled with a lack of action to resolve his debts and an unwillingness to acknowledge that he still owes debts that have been referred for collection or may have fallen from his credit history over time, his financial problems raise a security concern about Applicant's finances, which is articulated, 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 AG ¶ 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), I conclude that Applicant is simply unwilling to pay his past-due debts despite having the means and opportunity to do so since they arose almost nine years ago. He did not articulate a plan to resolve his debts or to improve his finances in any fashion.

In response, Applicant submitted information that requires consideration of the following 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

(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 financial problems are recent and not isolated. They continue through the presence of significant unresolved debt that arose in 2004 or 2005. Even accepting, which I do not, that the events causing his debts were unforeseen or beyond his control, he has not acted reasonably after those events occurred. His refusal to recognize the legitimacy of collection agencies' claims to his debts shows his willingness to rationalize his inaction in this regard, even after being advised by his supervisor in 2010 to do something about his debts. None of the pertinent AG ¶ 20 mitigating conditions apply,

and Applicant has failed to mitigate the security concerns established by adverse information about his finances.

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 a 60-year-old Air Force veteran who has also been a reliable employee for his company since 2001. However, the positive information in his background is insufficient to overcome the adverse information about his finances. Applicant's failure to respond to longstanding financial problems undermines confidence in his judgment and reliability, and sustains doubts about his suitability for continued access to classified information. Because protection of the national interest is the primary concern in these matters, 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.i, 1.j, 1.l:	For Applicant
Subparagraphs 1.a - 1.h, 1.k:	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