



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-08422
)	
Applicant for Security Clearance)	

Appearances

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

08/23/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems were caused by uneven employment for about five years after he left the military. Also, his wife had abused their credit in his absence during overseas military deployments, but he did not become aware of those debts until after he left the military. Most of the debts alleged in the SOR have been paid or otherwise resolved, and Applicant is able to meet his current obligations. He is unlikely to experience such problems in the future. Clearance is granted.

Statement of the Case

March 24, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, which included his responses to interrogatories from Department of

Defense (DOD) adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.² On February 1, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline (AG)³ addressing financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. He later asked to present his case to an administrative judge from the Defense Office of Hearings and Appeals. His request was granted and the case was assigned to me on June 21, 2013. I convened a hearing on July 16, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection. (Tr. 17 - 22) Applicant testified and presented one exhibit, which was admitted without objection as Applicant's Exhibit (Ax.) A (Tr. 69 - 71). The record closed on August 9, 2013, when I received Applicant's timely post-hearing submission, which has been admitted without objection as Ax. B. DOHA received the transcript of hearing (Tr.) on July 30, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$47,227 for 18 delinquent or past-due accounts specified in SOR 1.a - 1.r. Applicant admitted all of the SOR allegations, except for SOR 1.a, 1.b, 1.l, 1.m, and 1.q. He also presented five documents in support of his response. They were included in the record without objection. (Answer; Tr. 11 - 12) Applicant's admissions are incorporated herein as facts. After reviewing all of the available information, I make the following additional findings of fact.

Applicant is 30 years old and works as a systems functional tester for a large defense contractor. He was hired for that job in November 2010, and he has established an excellent reputation in the workplace as an integral part of the contract team. His program manager has confidence in Applicant's professionalism, reliability, and integrity. (Ax. B)

In December 2000, Applicant enlisted in the U.S. Marine Corps, where he served as a close-in air support specialist until he was honorably discharged in December 2005. While in the military, he estimates he was deployed about 80 percent of the time. In 2004 and 2005, he was deployed to Iraq for about eight months. (Tr. 29 - 30)

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 (AG) were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

Applicant and his wife were married in November 2000. They have one child, now age 11. Around May 2006, they separated, but made several attempts at reconciliation until September 2010, when their separation became permanent. Neither has filed for divorce due to the costs involved. Their child lives with Applicant's wife. Beginning in 2006, he paid his wife \$300 each month for support. Since obtaining his current job, he has been giving her \$500 each month, and still carries his wife and child on his medical coverage. Applicant now lives with his girlfriend and her seven-year-old child. (Gx. 1; Gx. 2; Tr. 25, 31, 75 - 78)

After leaving the Marines, Applicant and his family lived near a resort and tourist area of State A, where he grew up. Applicant was unemployed for about six months, then found part-time work while he attended college to become an x-ray technician. However, he could not take time off from work to complete the 40-hour practical part of his course work and had to withdraw from classes in 2007. Thereafter, he found work as an elevator mechanic through his uncle, a member of the elevator mechanics union. The pay and benefits were good, but his junior status in the union meant that he was among the first to be laid off when there was not enough work. When the economy slowed in 2008, the tourist area where he worked was especially hard hit. Previous lay-offs had been short and infrequent. After the economic downturn in 2008, it became increasingly difficult for Applicant to keep money coming in to meet the financial obligations (rent, car loan, etc.) he incurred while his income was good. It was not until 2010, when he moved to State B to take his current job, that he again was able to earn on a consistent basis. (Answer; Gx. 1; Gx. 2; Tr. 25 - 27, 32 - 38)

When Applicant submitted his eQIP in March 2011, he disclosed that he owed \$1,900 for a delinquent Military Star credit card account opened for use in the base exchange while he was in the Marines. Applicant averred that his military pay was garnished to satisfy this debt (SOR 1.j) before he left active duty. He also disclosed that he owed \$6,641 for the remainder after resale of a repossessed car. This debt was alleged at SOR 1.h and arose when he returned the car because he was unemployed and could no longer make payments. The full balance due on the car loan was alleged at SOR 1.i, which is decided for Applicant because it duplicates the debt at SOR 1.h and does not accurately reflect what he owes on that obligation. Finally, Applicant disclosed a past-due \$3,476 debt for unpaid rent that arose, as did SOR 1.h, when Applicant was unemployed and had to move his family by breaking his lease and finding cheaper housing. Credit reports obtained during his background investigation and subsequent adjudication listed these debts, as well as the remaining debts alleged in the SOR. (Answer; Gx. 1 - 5; Tr. 47 - 48, 51 - 59)

When Applicant attended school after leaving the military, he obtained student loans to help pay his tuition. Those loans came due after he left school in 2007, but he could not earn enough to pay them right away. As alleged in SOR 1.k and 1.l, his student loans, which total \$6,625, became delinquent. However, as of September 2012, those accounts were satisfied. Applicant has also paid the debts listed at SOR 1.n (\$51.65 for an unpaid insurance premium), 1.g (\$156 for an unpaid medical bill, also

alleged at SOR 1.o as a duplicate debt), and 1.r (\$207 for an electrical bill). (Gx. 1; Gx. 2; Answer; Tr. 26, 32 - 34, 59 - 60)

The \$116 debts alleged at SOR 1.a and 1.b are not Applicant's responsibility. They are for unpaid traffic fines incurred by his father. Applicant is his namesake, and available information showed that the person who received that ticket was born 20 years before Applicant. The SOR 1.a and 1.b debts were erroneously attributed to Applicant. (Answer; Gx. 2; Tr. 42 - 44)

Applicant believes the debts at SOR 1.d (\$1,342 owed to Best Buy) and SOR 1.f (\$3,017 owed to Chase) were incurred by his wife while he was deployed in 2004 and 2005. Because he was away so much while in the Marines, Applicant gave his wife a power of attorney to act in his stead regarding, among other things, their finances. He claimed that she used the power of attorney to open credit card accounts in his name.

Applicant does not have any knowledge of the debt alleged at SOR 1.m (\$8,013 owed to Resurgent). Information in his credit reports shows this likely is a collection action for the delinquent automobile loan addressed in SOR 1.h and 1.i. The most recent credit information shows the collection agency creditor no longer holds this account. Because this allegation also represents a duplicate of the debt at SOR 1.h, SOR 1.m is resolved for Applicant. (Answer; Gx. 3 - 5; Tr. 60 - 61)

As to the unpaid medical debts alleged at SOR 1.o (\$156) and 1.p (\$429), Applicant claims they are the same account, and testified credibly that the only medical treatment he has received since leaving the Marines was for an injured hand. According to the credit report obtained in 2011 for his background investigation, the debt in SOR 1.o originated in 2009, while the other debt originated in 2010. Neither debt appears on his two most recent credit reports in 2012 and 2013, but there is no indication he has paid or otherwise resolved either account. (Answer; Gx. 2 - 5; Tr. 62 - 63)

Applicant also does not have any knowledge of the debt alleged at SOR 1.q (\$2,798 owed to Bank of America). This debt was last used in 2005 and no longer appears on Applicant's credit reports. (Answer; Gx. 2 - 5; Tr. 64)

Applicant claimed that he has received financial counseling to improve his finances. Available information shows that counseling consisted of his dealings with a home construction company loan officer. Applicant wanted to buy a house and, as he investigated his ability to qualify for a mortgage, was advised about what debts he should pay and other steps he should take to finance the purchase. In this endeavor, Applicant focused more on his credit score than on resolving his past-due obligations. He raised his credit score, but he did not address the debts alleged at SOR 1.c - 1.f, 1.m, and 1.q, totaling \$18,858. The loan officer told him that those debts were old, were not being acted on by the creditors, and that addressing them would actually harm his credit score for purposes of qualifying for a mortgage. His dealings with the loan officer did not include advice on personal financial management, such as using a monthly budget. (Answer; Ax. A; Tr. 39 - 42, 71 - 75)

Regarding Applicant's current finances, he and his live-in girlfriend have a combined net monthly income, including Applicant's military disability payments, of about \$4,520. After all expenses, including Applicant's child support payments, he has about \$930 remaining each month. Applicant averred that he has been trying to negotiate with his car repossession creditor (SOR 1.h), but that he cannot afford the payment terms demanded of him and still meet all of his current obligations, such as rent, child support, and a car loan. Applicant is diverting some of his remaining monthly cash to savings and he has abandoned his efforts to buy a house. He now understands that he must resolve his financial problems, both to improve his credit rating and to remove his finances as a security risk. (Gx. 2; Tr. 80 - 88)

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 (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:

- (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. 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

⁴ See Directive. 6.3.

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

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.⁶

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.⁷

Analysis

Financial Considerations

Applicant accrued significant delinquent debt between 2005, when he left the Marine Corps, and 2010, when he started working for his current employer. Several of his debts remain unpaid or unresolved, and constitute a significant financial burden compared to his income and other assets. That information raised a security concern expressed, 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*).

By contrast, available information shows that, of the 18 debts alleged, the debts at SOR 1.a, 1.b, 1.g, 1.l - 1.n, 1.p and 1.q, totaling \$29,156 have either been paid or have been shown to be invalid through duplication or other reasons. This means that about 60 percent of the total debt alleged is no longer at issue. Further, of the remaining debts, the validity of SOR 1.q is questionable, and the debts at SOR 1.d and 1.f were accrued without his knowledge. While he accepts responsibility for SOR 1.d and 1.f, he had no role in accruing these debts, which are beyond his ability to pay.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

Applicant acknowledges the remaining debts at SOR 1.c, 1.e, 1.h, 1.o and 1.p, totaling \$10,914. It will be difficult for him to repay the SOR 1.c and 1.h debts, which comprise about 90 percent of these obligations. However, based on his past repayment efforts, he is likely to soon resolve the others.

Additionally, Applicant now understands that the advice he received from the home construction loan officer was provided only for the limited purpose of selling him a mortgage. He has put aside his plans to buy a house and is again focused on resolving his past-due obligations. His current finances show a positive monthly cash flow that should help him continue to pay off his debts and avoid future difficulties. He is meeting all of his current obligations, including voluntary child support payments.

All of the foregoing supports application 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;
- (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.

Applicant's financial problems do not reflect adversely on his judgment or reliability. His financial problems did not arise from any misconduct or mismanagement of his finances. He has tried to be proactive in resolving his debts, and it is unlikely he will experience similar problems in the future. Applicant has mitigated the security concerns 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 30-year-old defense contractor employee and is presumed to be a mature, responsible adult. That presumption is supported by the fact that he is a combat veteran, who has met, to the best of his abilities and circumstances, his financial obligations and the needs of his family. He has

a good reputation in the workplace for professionalism, reliability, and integrity. His financial problems arose, in large measure, from circumstances beyond his control. In trying to resolve those problems, he received financial advice that was not necessarily consistent with the standards by which security clearance cases are adjudicated. But he now has recognized the need to fully resolve his financial problems so he will not be a security risk. A fair and commonsense assessment of available information shows that Applicant has mitigated the security concerns about his finances.

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.r: 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