



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-09253
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

05/22/2013

Decision

MALONE, Matthew E., Administrative Judge:

Security concerns about two instances of criminal conduct are mitigated by the passage of time without further incident. However, Applicant failed to mitigate the security concerns raised by significant delinquent debt, which arose between 2008 and 2010, and which remains unresolved. His request for a security clearance is denied.

Statement of the Case

On July 14, 2010, 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 completed 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 November 20, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline F (Financial Considerations), and Guideline J (Criminal Conduct).³ Applicant timely responded to the SOR and requested a decision without a hearing. On February 27, 2013, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on October 23, 2012. He did not respond to the FORM. The case was assigned to me on May 14, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes approximately \$40,700 for seven delinquent debts alleged at SOR 1.a - 1.g. The debt at SOR 1.d is alleged as the subject of a civil judgment against Applicant. The rest are alleged to be in collection status or charged off as business losses.

Under Guideline J, it was alleged Applicant was arrested in November 2009 and charged with acting in a manner injurious to a child and with resisting arrest, for which, in June 2010, he was ordered to attend a 12-week parenting course and to be evaluated for alcohol abuse as conditions of a six-month accelerated discharge or probation before judgment (SOR 2.a). The Government also alleged that in July 2010, Applicant was arrested and charged with driving while intoxicated. In February 2011, he was convicted of the latter charge and placed on one year of conditional discharge/probation. As part of his sentence, he was fined and ordered to complete a Drinking Driver program (SOR 2.b). (FORM, Item 1)

Applicant denied the overall security concerns about finances and criminal conduct, but admitted all of the underlying factual allegations in the SOR. (FORM, Item 2) In addition to the facts established by Applicant's admissions, I have made the following findings of fact.

Applicant is 45 years old. Since July 2010, he has been employed by a defense contractor in a position that requires a security clearance. He has held a variety of jobs after being honorably discharged from the United States Navy in August 1993 following seven years of enlisted service. Applicant held a security clearance from July 1986 until his discharge. Applicant and his wife have been married since November 2009, and

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 See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

they have at least one child.⁵ A previous marriage between July 2000 and October 2005 ended when his wife died. (FORM, Items 2 and 3)

In June 2009, Applicant was laid off from his job as a quality technician for a defense contractor. After four months of unemployment, he found part-time work as a project specialist in October 2009. He has been employed full time since April 2010. (FORM, Items 3 and 4)

When he submitted his eQIP, Applicant disclosed several delinquent debts. During his background investigation, he was interviewed by a Government investigator about past-due debts listed in a credit report produced on July 27, 2010. Applicant acknowledged owing all of the past-due debts contained in the credit report, and he claimed his debts arose because of his first wife's untimely death. He also cited his June 2009 lay-off and subsequent unemployment and underemployment as causes of his financial problems. He incurred unpaid medical bills when he had no employer-sponsored medical insurance, and he relied on credit cards to meet regular expenses. His mortgage was about seven months in arrears when he was interviewed and he was negotiating a mortgage modification with his lender. That account is now current. (FORM, Items 2 - 8)

When he responded to the SOR, Applicant and his wife had begun the process of filing for Chapter 13 bankruptcy protection. By November 2012, they had paid all of the filing fees and attorney's costs prerequisite to filing his petition. However, in response to the February 2013 FORM, Applicant did not provide any information showing his Chapter 13 petition actually has been filed or that he is making timely payments under a wage earner's plan. (Answer)

As part of his response to interrogatories from DOD adjudicators in August 2012, Applicant submitted a personal financial statement (PFS). The PFS showed that he is the sole income earner for his family and that he is covering all of his monthly expenses. The PFS reflects a positive monthly cash flow of about \$436. However, the listed expenses do not include any of the past-due debts listed in the SOR. (FORM, Item 4)

On November 18, 2009, Applicant was arrested and charged with acting in a manner injurious to a child, and with resisting arrest. That evening, Applicant and his wife had a few drinks and began to argue. His wife called the police who spoke to each of them, but left without taking any other action. Later that night, she again called the police because Applicant was trying to feed their infant child in the bedroom after Applicant had been drinking. Applicant did not like being questioned by the police and raised his voice. He was arrested, fingerprinted, and released. At a June 2010 hearing, Applicant was ordered to complete a parenting course and was evaluated for alcohol abuse. On completion of these requirements, Applicant's charges were to be dismissed in six months. (FORM, Item 4)

⁵ No children were listed in Applicant's eQIP. It is inferred from events documented elsewhere in the record and pertaining to SOR 2.a that Applicant and his wife have at least one child under five years of age.

In June 2010, Applicant was arrested after being stopped by police as he drove home from a party where he and his wife had been drinking. Applicant admitted having as many as six beers in a four-hour period. On February 22, 2011, Applicant was again placed on probation, this time for one year. As a condition of having the charges dismissed, Applicant was to complete a victim impact panel and drinking driver program. He was also fined and ordered to install a vehicle interlock on his car. He has never been evaluated as alcohol dependent, he has completed all of the court's requirements, and his driving privileges have been fully restored. (FORM, Items 2 and 4)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ 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 interest⁷ 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.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

⁶ Directive, 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ Directive, E3.1.14.

⁹ Directive, E3.1.15.

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 them to have access to protected information.¹⁰ 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.¹¹

Analysis

Financial Considerations

Applicant accrued more than \$40,000 in unpaid debt between 2008 and 2010. One of the debts is being enforced by a civil judgment, and none of the debts have been paid or otherwise resolved. These facts 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, Applicant's conduct requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Mitigation of the security concerns raised by the Government's information is available if Applicant can produce information sufficient to establish one of the following pertinent AG ¶ 20 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;

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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; or

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

The debts at issue are still unresolved and arose before, during, and after his unemployment in 2009. Although the passing of his first wife in 2005 was a tragic, unforeseen circumstance, it has not been established that any of his debts were caused by that event. Even if Applicant's debts were beyond his control, he did not establish that he has acted reasonably under the circumstances in the seven years since his first wife died or in the three years since he was unemployed or underemployed. While Chapter 13 bankruptcy protection might be a suitable course of action here, Applicant did not show that he is now actually repaying his debts through a filed bankruptcy petition. Nor has he received counseling or other help to improve his finances. Finally, he does not dispute any of the alleged debts. For all of the foregoing reasons, none of the AG ¶ 20 mitigating conditions apply. Applicant has not mitigated the security concerns about his finances.

Criminal Conduct

Applicant was arrested in November 2009 and July 2010. Both offenses were disposed of through a conditional discharge program, which allowed for dismissal of the charges on completion of certain court-ordered actions. This information raises a security concern about criminal conduct that is expressed at AG ¶ 30, as follows:

Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

More specifically, the record requires application of the following AG ¶ 31 disqualifying conditions:

(a) a single serious crime or multiple lesser offenses; and

(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant was only on probation from his first arrest for a month before he was arrested in July 2010. It appears the court extended the probationary period and added conditions which addressed his second offense. By contrast, Applicant has not repeated his conduct in almost three years. Both incidents occurred after he had been drinking;

however, he was not evaluated as alcohol dependent and his use of alcohol does not appear to be an ongoing concern. This information supports application of the following AG ¶ 32 mitigating concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

On balance, I conclude Applicant will not repeat his past criminal conduct. The record as a whole shows security concerns about his criminal conduct are mitigated.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F and J. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a 45-year-old employee of a defense contractor and an honorably discharged Navy veteran. In 2009 and 2010, he was arrested for alcohol-related offenses, but he has satisfied all of the court's probationary requirements. Alcohol consumption is not an ongoing security concern here, and there have been no such incidents since 2010. However, despite this positive information, Applicant has not overcome the Government's concerns about his finances. Available information does not support Applicant's claims that his debts arose from circumstances beyond his control, and he has not sufficiently acted to resolve his debts. A fair and commonsense assessment of available information shows that doubts remain about Applicant's suitability because of his financial history. The Government's compelling interest in protecting its sensitive information requires that these doubts be resolved against granting access to classified information.

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.g :	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

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