



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-11215
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant owes nearly \$27,000 for 33 delinquent debts. Despite being steadily employed since at least 2001, Applicant has not tried to pay or otherwise resolve his debts. He has failed to mitigate security concerns raised by his financial problems, and his request for a security clearance is denied.

Statement of the Case

On May 9, 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 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 February 1, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On March 28, 2013, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on April 17, 2013, but he did not respond to it. The record closed on May 17, 2013, and the case was assigned to me on June 21, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$26,992 for 33 delinquent debts. Most of the debts have been referred to collection agencies by the original creditors. However, the debts alleged at SOR 1.g - 1.s are owed to the same creditor, total \$6,480, and are being enforced through a civil judgment against the Applicant. Applicant admitted all of the allegations. (FORM, Items 1 and 3).

Applicant is 30 years old. Since 2001, he has worked as a pipe fitter at a defense contractor-run shipyard. His eQIP indicates he received a security clearance in 2004. (FORM, Item 4)

Applicant is not married, but he has two children, ages eight and nine. In 2002 or 2003, he leased an apartment for his children and their mother. The SOR 1.g - 1.s civil judgments are the result of the mother's failure to pay rent. However, the lease was in Applicant's name only and the debts remain his responsibility. (FORM, Item 7)

Applicant listed only one debt when he completed his eQIP. However, credit reports obtained by investigators reflected the debts alleged in the SOR. In a July 2011 subject interview, he was confronted with the contents of the credit reports. He indicated he was not aware of any judgments against him, but stated that he would make arrangements to resolve the debts. He was aware of the debt at SOR 1.f, a \$17,606 car repossession debt, but claimed he was making \$25 monthly payments on that account. Applicant also stated that he was not aware of the other debts, but that he would contact all of the creditors to resolve them. (FORM, Items 4 and 7)

Applicant has not presented, in his Answer or in response to the FORM, any information to show he is trying to resolve his debts. A personal financial statement

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 seven documents (Items 1 - 7) proffered in support of the Government's case.

(PFS) submitted in response to DOD interrogatories showed he has less than \$300 remaining after expenses each month. Those expenses do not include payments to any of the debts listed in the SOR. Applicant has not received any professional financial assistance or counseling to improve his finances. (FORM, Item 7)

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 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. 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.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

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

⁵ Directive. 6.3.

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

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

them to have access to protected information.⁹ 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.¹⁰

Analysis

Financial Considerations

Available information shows that Applicant has accrued almost \$27,000 in delinquent debt since 2002 or 2003. Applicant admitted all of the SOR allegations. There is no information showing he has paid any of the alleged debts, or that he is able to make any meaningful payments on his debts. 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, available information 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.

Because the Government met its burden of production, the ultimate burden of persuasion shifted to Applicant to refute, explain, or mitigate the security concerns raised by the Government's information. Applicant did not present any information that would support application of mitigating conditions listed at AG ¶ 20. Security concerns about his finances remain unchanged.

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 30 years old and

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

has been employed in the defense industry since 2001. He is presumed to be a responsible adult. However, the adverse information about his debts and his failure to address them undermine confidence in his judgment and reliability. He provided nothing in response to the Government's information, leaving unchanged the doubts about his suitability for a clearance. The Government's compelling interest in protecting its sensitive information requires those 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.gg: Against 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