



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 11-12786
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Applicant for Security Clearance)

Appearances

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

04/26/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems were caused by circumstances beyond his control. However, he acted responsibly to resolve his past-due debts and improve his finances. Clearance is granted.

Statement of the Case

After reviewing the results of Applicant's background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's request for access to classified information.¹ On January 3, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts

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

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 6, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection. (Tr. 19 - 25) Applicant testified and presented one witness. He also proffered one exhibit, which was admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received the transcript of hearing (Tr.) on March 22, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$28,550 in past-due debts for seven accounts specified in SOR 1.a - 1.g. Applicant denied with explanations all of the SOR allegations. (Answer) After reviewing all of the available information, I make the following findings of fact.

Applicant is 53 years old and works as a technician for a defense contractor. He was hired for that job in January 2012. After graduating high school in 1979, Applicant enlisted in the U.S. Marine Corps. He served as a combat engineer until being honorably discharged in 1983. He also held a security clearance without incident during his enlistment. Applicant was married from 1986 until June 2001, when he and his wife divorced. They had three children, all now adults. (Gx. 1)

Since 2008, Applicant has lived with a woman to whom he is now engaged to be married. Until 2010, they lived in State A where Applicant worked full-time as a maintenance supervisor at a rehabilitation facility, and part-time as a driver for a national delivery company. In 2010, he and his fiancée moved to State B to care for her father. Initially, they moved in with him to save money. However, they soon had to find a new place to live because he is an alcoholic and behaved badly towards them. (Gx. 1; Gx. 2; Tr. 45)

Before Applicant moved to State B, he was told by his part-time employer in State A that he could get a full-time position in State B. However, after Applicant moved, a hiring freeze took effect and he struggled to find work. In July 2010, he took a full-time custodial job but he could not find additional part-time work. In addition to unexpected moving expenses after relocating to State B, Applicant had cosigned his daughter's student loan. When his daughter had trouble paying it, Applicant became obligated for the \$6,930 debt alleged at SOR 1.g. All of these circumstances lead Applicant to rely on credit cards to help meet expenses. However, because his monthly income had fallen from \$2,800 to \$1,400, he was unable to stay current on his credit card payments or his daughter's student loan. (Gx. 1; Gx. 2; Gx. 4; Gx. 5; Tr. 28 - 29, 44 - 45)

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).

In May 2011, Applicant retained an attorney to file for bankruptcy protection. However, Applicant ran out of money, including funds in his 401(k) retirement account, and the bankruptcy petition was never filed. (Gx. 2; Gx. 3; Tr. 16 - 19, 36 - 38)

In November 2012, Applicant enrolled in a debt management plan (DMP) with a financial counselor who negotiated settlements with Applicant's creditors. He has been paying \$255 each month through automatic bank account deductions. Under that plan, he will satisfy his debts in less than four years. Applicant has already paid off the debts alleged at SOR 1.a and 1.e, and the debt alleged at SOR 1.f is a duplicate of the SOR 1.d debt. (Answer; Gx. 2; Ax. A; Tr. 29 - 34, 40 - 41, 46 - 48)

Applicant submitted a personal financial statement (PFS) with his December 2012 response to adjudicators' interrogatories. The PFS showed he has about \$200 remaining each month after expenses. Included in his expenses is the \$255 DMP payment. (Gx. 2)

Applicant is an excellent employee. His supervisor testified that Applicant views his job as a much-appreciated opportunity, and that Applicant is one his most reliable workers. He is conscientious about adhering to security procedures. (Tr. 52 - 55)

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:

- (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.

³ See Directive. 6.3.

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

Applicant accrued significant delinquent debt through unpaid credit cards and his daughter's student loan. Information available when the SOR was issued showed the debts were unresolved. 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*). As to AG ¶ 19(a), information shows an inability to pay, not an unwillingness.

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).

By contrast, Applicant's debts arose through circumstances beyond his control. When he moved to State B, he reasonably expected to find work with the same delivery company for whom he had worked in State A. But that employment opportunity ended because of a hiring freeze. He was unable to find full-time work that paid him income comparable to what he had earned in State A. When he incurred unexpected relocation expenses and became obligated to pay his daughter's student loan, he began to use credit cards to make ends meet. His income had fallen by 50% and he decided to resolve his financial problems through bankruptcy protection. However, he could not file a petition because he ran out of money to pay the costs of filing bankruptcy. Two months before the SOR was issued, he started a debt management plan that will resolve his debts within four years. He has also paid outright two of the debts alleged in the SOR. Applicant has a positive monthly cash flow, he is meeting all of his current obligations, and he has incurred no new unpaid debts.

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 was proactive in trying to resolve 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 53 years old and presumed to be a mature, responsible adult. That presumption is supported by the fact that he is a military

veteran, who, when faced with financial adversity, promptly tried to resolve his debts to the best of his ability. Applicant has a good reputation in the workplace for proper safeguarding of classified information, and for reliability and trustworthiness. 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.g:	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