



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 11-13984
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

12/09/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's efforts to resolve his financial difficulties have not been undertaken in good faith. His actions are insufficient to overcome the security concerns about his financial decision making. Clearance is denied.

Statement of the Case

On June 13, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense 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 grant Applicant's request for

access to classified information.¹ On June 5, 2013, 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 August 9, 2013, and I convened a hearing on September 19, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 3, which were admitted without objection. (Tr. 19 - 25) Applicant testified and proffered six exhibits, admitted without objection as Applicant's Exhibit (Ax.) A - F. DOHA received the transcript of hearing (Tr.) on September 30, 2013. I left the record open after the hearing to receive additional relevant information from Applicant. His timely post-hearing submissions have been admitted without objection as Ax. G. The record closed on October 15, 2013.³

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$37,297 for nine delinquent or past-due debts (SOR 1.a - 1.i). At hearing, Department Counsel withdrew the allegation at SOR 1.h, thus reducing the total amount of debt at issue to \$37,270. Applicant admitted, in part, and denied, in part, the remaining Guideline F allegations. (Tr. 11) In addition to his admissions, I make the following findings of fact.

Applicant is 50 years old and works as a senior analyst for a defense contractor. He has held that position since November 2011. Applicant has worked in the same position with two other contractors at the same military facility since September 2008. He has a bachelor's degree in journalism, and earned a master's degree in management in 2012. His recent job performance evaluations reflect excellent work, reliability, and professionalism. He currently earns about \$100,000 annually. (Gx. 1; Gx. 2; Ax. G; Tr. 9, 59)

Applicant served on active duty in the United States Army from November 1986 until he retired in December 2006 with an honorable discharge as a major. In addition to his income from his defense contractor job, Applicant receives about \$40,000 annually in retired pay, as well as another \$12,000 annually in disability benefits. He served in the Army Quartermasters Corps and deployed to Iraq in Operation Desert Storm. His personal decorations include multiple awards of the Meritorious Service Medal, the Army Commendation Medal, and the Army Achievement Medal. Applicant's security

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).

³ As originally ordered at hearing, the record should have closed before receipt of the transcript. However, the federal government shutdown between October 1 and October 10 delayed completion of this record.

clearance, which he held throughout most of his Army career, was last renewed in 2005. (Gx. 1; Ax. G; Tr. 35, 54)

Applicant has been married three times. His first marriage began in May 1986 and ended by divorce in August 1994. He and his first wife had two children. Unfortunately, one child died in 1987. The surviving child is now age 23. His second marriage began in September 1994 and ended by divorce in February 2008. At the time of the divorce, his second wife was an Army lieutenant colonel. His second marriage produced three more children, now ages 16, 15, and 12. Applicant pays about \$1,500 each month in child support. Applicant married his current wife in September 2010. In addition to his own minor children, he also supports his third wife's two children, ages 19 and 14. (Gx. 1; Gx. 2; Ax. G; Tr. 63)

When Applicant retired, he had not found civilian employment. While still on active duty, he obtained a loan to pay for real estate investment classes he took between August 2005 and March 2006. He eventually defaulted on that debt, which is alleged at SOR 1.g. On September 5, 2013, he settled that debt for about \$1,000 less than the total obligation. (Ax. E; Tr. 47 - 48, 60 - 61) From his retirement in 2006 until he was hired by a defense contractor for full-time work in September 2008, Applicant lived off his retired pay and disability pay while trying, without success, to start a home-based business. He also relied on credit cards to meet his expenses. A personal loan and a credit card account that became delinquent during this period, alleged at SOR 1.b and 1.c, were the subject of two civil judgments entered against Applicant in July 2008. Applicant paid those debts in March and April 2013. (Gx. 1 - 3; Ax. A; Ax. B; Ax. G; Tr. 44 - 47)

Other credit card accounts, alleged at SOR 1.a, 1.d, 1.e, and 1.i, also became delinquent before 2008. As early as 2003 and 2004, Applicant had become delinquent on previous credit card accounts with the creditor listed at SOR 1.e. Applicant's debt with the SOR 1.i creditor was resolved in his favor as part of a civil suit in which he was one of many named plaintiffs. He paid the SOR 1.d account the day before his hearing in this matter. The SOR 1.a account was paid six days after his hearing. The SOR 1.e debt was forgiven by the creditor, but was attributed to Applicant as taxable income, which created an unpaid federal tax debt in August 2013. Applicant paid that debt later during the day of his hearing. (Gx. 1 - 3; Ax. A - G; Tr. 15, 31)

Applicant was interviewed for his clearance by a Government investigator on July 27, 2011. Most of that interview centered on delinquent debts contained in a credit report obtained subsequent to Applicant's June 2011 e-QIP. During the interview, Applicant stated he would begin resolving the debts discussed, most of which have been alleged in the SOR, by the end of 2011. (Gx. 2; Gx. 3)

Applicant testified that he did not immediately begin paying his past-due debts when he started working in 2008 because he had other obligations. For example, he was in the midst of his second divorce and had to pay legal fees as well as costs associated with finding a new home. More significantly, Applicant became responsible

for \$1,500 each month in child support, as well as school tuition and related expenses. Applicant also averred that he did not want to make incremental payments on his delinquencies. Rather, his plan was to save enough money to pay the debts in full. His credit score, he reasoned, would suffer more if he paid portions of the debts. However, he also acknowledged that his credit score was already severely downgraded. (Ax. G; Tr. 52 - 53)

Applicant vacationed outside the United States several times since 2004. He made two such trips while he was unemployed between 2006 and 2008. He has continued to take those trips since 2008, most recently in August 2013. On average, the trips have cost around \$2,000. (Gx. 1; Gx. 2; Tr. 49 - 51)

As to Applicant's current finances, he has not incurred any new unpaid debts, and his income is sufficient to meet all of his current obligations. As of March 2013, Applicant has more than \$1,800 remaining each month after expenses. However, when he earned his master's degree in 2012, he incurred about \$21,000 in student loans that were deferred until October 2013. He is also paying about \$588 each month for two timeshares owned by his current wife. (Gx. 2; Tr. 41 - 42)

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.

⁴ See Directive. 6.3.

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 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

The Government established that Applicant accrued the delinquent debts alleged in the SOR. Those debts remained unpaid for several years, even after he was asked about his financial problems more than two years ago during his background investigation. Available information raises 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*). Applicant was able to start repaying his debts after 2008. Before his second marriage ended in 2008, his retired pay and

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

disability benefits, combined with his second wife's income as an active duty Army officer, should have been enough for him to start resolving his debts.

By contrast, I have considered the following pertinent 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;

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

The mitigating condition at AG ¶ 20(e) applies to the debt at SOR 1.i, which was invalidated through a civil suit. As to all of the SOR allegations, I conclude no other mitigating conditions apply. Applicant established that he has paid or otherwise resolved all of the debts alleged in the SOR, that he has incurred no new delinquencies, and that his income meets his current financial obligations. Nonetheless, Applicant's financial problems are recent, because it was not until just before or just after his hearing that he paid off his debts. They are not isolated because there are numerous debts alleged and, although the SOR debts became delinquent after Applicant retired, he also incurred delinquencies while he was on active duty.

Applicant also points to his two years of unemployment after the Army as the reason for his delinquencies. However, his lack of steady employment was his own choice, as he tried for two years to start a business and used personal credit to make ends meet. His use of personal credit also extended to expensive vacations taken while unemployed and falling behind on his financial obligations.

These facts show that Applicant is not likely to commit improper or illegal acts to generate funds with which to pay his debts. However, also of concern is the questionable judgment and trustworthiness that arises when a person neglects his financial obligations. Such conduct may indicate that Applicant may not tend to the fiduciary responsibilities that come with holding a security clearance. Applicant claimed that he was saving to pay his debts in full as opposed to acting earlier to make

incremental payments on some of his debts. However, this claim is undermined by his continued spending on vacations while he was unemployed and after he returned to the workforce in 2008. It is clear from all information about Applicant's intentions regarding his debt resolution that he only acted in a substantive way after he received the SOR.

All of the foregoing precludes sufficient application of the mitigating conditions to resolve the security concerns about Applicant's finances. The allegations under Guideline F are resolved against the Applicant.

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 50 years old and presumed to be a mature, responsible adult. He is a decorated retired military officer and, since 2008, has established a record of excellent performance as a defense contractor. However, his failure to more timely resolve his financial problems reasonably raised a security concern about his suitability for continued access to classified information. Doubts remain about his judgment given his inaction since 2008 to address his debts. 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.a - 1.g, 1.i:	Against Applicant
Subparagraph 1.h:	Withdrawn

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