



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 11-15060
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant demonstrated sound judgment in response to financial problems that arose through no fault of his own. His current finances are sound. His request for a security clearance is granted.

Statement of the Case

On September 9, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain or renew 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 May 16, 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 October 31, 2013, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on November 21, 2013, but he did not timely provide any response or other additional information. The record closed on December 21, 2013, and the case was assigned to me on January 17, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes in excess of \$118,000 for 13 delinquent or past-due debts alleged in SOR 1.a - 1.i. Applicant denied, with explanations, the allegations at SOR 1.a, 1.c, and 1.h - 1.j. He admitted, with explanations, the remaining allegations. (FORM, Items 1 and 3). In addition to his admissions, I make the following findings of fact.

Applicant is 52 years old and has worked for defense contractors since 1990. He has held a security clearance without incident for his entire career. Applicant was married from May 1991 until April 2008, when he and his wife divorced after a 13-month separation. They have a 16-year-old child, who lives with Applicant's ex-wife. (FORM, Items 5 and 6)

In April 1999, Applicant and his ex-wife bought a home in which they both lived until Applicant moved out in January 2007. The home was financed through a \$230,000 mortgage in Applicant's name only. Another lien on the home arose through a \$35,000 home equity line of credit, also in Applicant's name only. The 2008 divorce decree made Applicant's ex-wife solely responsible for paying both mortgages, but Applicant's name was never removed from the loans. Applicant's ex-wife lost her job in 2009 and the mortgages went into default. However, between 2008 and 2012, Applicant was not aware that the mortgages were not being paid. Since becoming aware of the delinquencies, Applicant has been trying to work with the lenders to obtain loan modifications. He has consulted with an attorney as he is considering bankruptcy should the mortgages be foreclosed. His goal since the separation has been for his child to remain in that home until graduating from high school. (FORM, Items 4 - 6)

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.

While Applicant and his wife were separated, she totaled her car. Applicant was required by the terms of their separation agreement to co-sign a loan for a new car for her to use. When she lost her job, she struggled to make the car payments and it was repossessed for a few days until Applicant paid \$1,200 to cover the missed payments. (FORM, Items 4 - 6)

The separation agreement also required Applicant's paychecks to be deposited into his wife's checking account, with a \$100 weekly allowance paid to Applicant. This resulted in financial difficulties for Applicant. He used a high-interest personal line of credit and credit cards to meet expenses, including rent and legal fees. Those accounts became past-due, and Applicant established payment plans in 2010. Applicant disclosed all of his delinquent or past-due debts in his e-QIP. (FORM, Items 5 and 6)

The current background investigation produced credit reports attributing to Applicant the debts alleged in the SOR. However, in response to DOD interrogatories, Applicant established that his ex-wife was responsible for the debts at SOR 1.e, 1.j, and 1.k, totaling \$106,353. This is almost 90 percent of the total debt alleged. Applicant further established that, even though he is still liable on all three loans, the accounts became delinquent without his knowledge and through no fault of his own. Nonetheless, Applicant has been active in trying to resolve each debt while still meeting all of his other obligations. (FORM, Items 5 - 9)

As to the remaining debts, Applicant has been repaying the past-due accounts alleged at SOR 1.a, 1.b, and 1.f since June 2013. He further established that the debts at SOR 1.c, 1.h, and 1.i are not his debts, and that he is in the process of negotiating repayment plans for SOR 1.d, 1.g, and 1.l. (FORM, Items 4 and 6)

Applicant's current finances are sound. A personal financial statement submitted in response to DOD interrogatories showed that Applicant has in excess of \$8,000 remaining each month after expenses. The expenses he listed included repayment of several debts, alimony and child support payments that have always been made as required, and other expenses in support of his ex-wife and his child. Applicant is helping support them through medical insurance, tuition, savings for college, and unplanned expenses, such as uncovered medical and dental needs. He has incurred no new unpaid debts, and had not experienced any financial problems until his separation and divorce. (FORM, Items 4 and 6 - 9)

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:

⁵ Directive. 6.3.

(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 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

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

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

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

Analysis

Financial Considerations

The information presented in the FORM, as well as Applicant's admissions in response to the SOR, was sufficient to support the allegations in the SOR. The facts thereby established raised 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 disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and (c) (*a history of not meeting financial obligations*).

In response to the Government's interrogatories, and in support of his response to the SOR, Applicant presented sufficient information sufficient to support 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;

(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.

Applicant's financial problems arose solely because of his divorce and the unforeseen loss of his wife's income in 2009. Applicant was already repaying his own

debts in 2010 before he learned in 2012 that his ex-wife had not been paying the mortgages as required. When he learned that the mortgages were in default, he made concerted efforts to resolve both accounts so his child would not have to move from the home where he was raised. Applicant also has continued to support his ex-wife and his child, both as ordered through the divorce, and in response to unplanned expenses.

Applicant had never before experienced financial problems. His current finances are sound, in that he has significant positive cash flow each month and he has not incurred new unpaid debts since 2008. It is unlikely he will again find himself unable to meet his financial obligations. The security concerns about his finances are mitigated.

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 52 years old, has been employed in the defense industry since 1999, and is presumed to be a responsible adult. The information he submitted in response to the Government's information supports such a presumption. Applicant abided by the terms of his divorce and has not shirked his financial responsibilities even though his debts arose through no fault of his own. The circumstances that resulted in the adverse information presented here are unlikely to recur. His candor and willingness to fully disclose his financial problems, along with his proactive approach in resolving his debts, reflect well on his judgment and reliability. A fair and commonsense assessment of all available information shows leaves me with little doubt about Applicant's continued suitability for 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: FOR APPLICANT

Subparagraphs 1.a - 1.l: For Applicant

Conclusion

In light of all available information, 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