



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-01774
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Gary Rigney, Esq.

07/21/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's debts do not indicate poor judgment or a lack of trustworthiness. His current finances are sound and do not present a security concern. His request for continued access to classified information is granted.

Statement of the Case

On July 5, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his work as a consultant to a defense contractor. Based on the results of the ensuing background investigation, which included Applicant's responses to interrogatories from Department

of Defense (DOD) adjudicators,¹ it could not be determined that it was clearly consistent with the national interest for Applicant to continue to hold a security clearance.²

On December 23, 2013, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline³ for financial considerations (Guideline F). On January 6, 2014, Applicant responded to the SOR (Answer) and requested a hearing.

The case was assigned to me on May 13, 2014, and I convened a hearing on June 18, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibits (Ax.) A - E. All exhibits were admitted without objection. Two witnesses testified for Applicant. I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on July 9, 2014, after Applicant elected not to proffer additional information. DOHA received the hearing transcript (Tr.) on June 23, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$84,562 for four delinquent or past-due debts (SOR 1.a - 1.d). Applicant denied SOR 1.a, claiming it is a disputed debt for a defective cell phone returned in 2011. He admitted, with explanations, the SOR 1.b - 1.d allegations. Based on all available information, I make the following findings of fact.

Applicant is 74 years old. He has worked in various capacities within the defense industry since 1962. For most of his career, he has held a security clearance up to top secret, as well as access to special compartmented information (SCI) and other special access program (SAP) clearances. He has always handled classified information properly and has an excellent reputation for professionalism and trustworthiness. His 2011 security clearance application constitutes a new request as a previous clearance had lapsed in about 2009. He requires a clearance for work as an independent consultant to a defense contractor, who retained Applicant in June 2011. However, he has not worked in that position since January 2012, when an interim clearance based on his July 2011 EQIP was rescinded. (Gx. 1; Gx. 2; Ax. A; Tr. 6, 24 - 25, 51, 56 - 71)

Applicant and his wife have been married since April 1961. They raised four children, now between the ages of 44 and 52. Applicant and his wife have lived in the same house since 1988. In 1967, he earned a master's degree in mathematics, and in

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 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).

1968, he was hired as an engineer by the Department of the Army, where he worked until 1984. Thereafter, Applicant worked directly and indirectly for various defense contractors. He also has consulted for United States Senate committees on legislation related to defense, space, and intelligence issues. Pending adjudication of this matter, Applicant's only employment is as an adjunct professor at a nearby state university. (Answer; Gx. 1; Ax. A; Tr. 64 - 71)

When Applicant submitted his EQIP, he disclosed a past-due debt for an unpaid cell phone account. In 2011, Applicant opened a cell phone account and purchased a new phone. Because the phone did not work, Applicant sent it back within the allotted time and believed his obligation was ended at that point. However, the cell phone company demanded \$300 for early termination of his contract. Applicant has, at all times, disputed this debt and does not intend to pay it. The account was listed in a 2011 credit report as being disputed. Applicant also provided information showing he returned the phone. Applicant has not heard from the cell phone company or any collection agency in almost four years. (Answer; Gx. 1 - 3; Ax. B; Tr. 34 - 35)

Applicant's youngest child has a master's degree and a doctorate. She is a successful medical professional who taught at a state medical college and now works for a pharmaceutical company. She financed her graduate studies through student loans co-signed by Applicant in 2005 and 2007. When Applicant was interviewed by a Government investigator during his background investigation in July 2011, he was confronted with a credit report showing, as alleged in SOR 1.c and 1.d, that both student loans were delinquent. Before his current application for clearance, Applicant occasionally had been contacted by the student loan creditors when his daughter was behind on her payments. However, to the best of his knowledge, she made the necessary payments to bring her student loans up to date. Applicant has had no other contact with the student loan creditors since 2011. In March 2014, Applicant wrote to those creditors seeking information about the status of his daughter's student loans and offering to pay what he could. There has been no response. (Answer; Gx. 2 - 4; Ax. D; Tr. 27 - 28, 30)

In 2009, Applicant also co-signed a car loan with his youngest child. However, as alleged at SOR 1.b, the loan became delinquent when she failed to pay as required. The car was repossessed in 2007. Applicant assumed it was resold and made inquiries through his attorney about any remaining deficiency to be paid. There was no response and Applicant has not heard from the lender in at least four years. In March 2014, Applicant wrote to the lender seeking information about the debt and offering to pay what he could. There has been no response. (Answer; Gx. 2 - 4; Ax. C; Tr. 30 - 34)

Pending final adjudication of his clearance, Applicant's income is limited to his adjunct professor's monthly salary of about \$1,000, monthly social security benefits for him and his wife, and income from a reverse mortgage based on the equity in their home. Before his interim clearance was rescinded in 2012, he was earning in excess of \$100,000 annually. Currently, Applicant and his wife have \$3,350 in net monthly income. They have about \$350 remaining after expenses each month. He and his wife

live a modest and frugal lifestyle, and they have incurred no unpayable debts. Applicant understands the ramifications of co-signing a loan, but his daughter earns a substantial living and is able to pay her debts. In hindsight, Applicant acknowledges he may have spoiled his daughter, who seems to struggle with managing her own finances. (Tr. Gx. 2; Tr. 49 - 51, 53 - 54)

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 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 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

⁴ See Directive. 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

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

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant’s finances that is addressed 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*).

I have also concluded that the following AG ¶ 20 mitigating conditions apply:

(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;

⁷ See *Egan*; AG ¶ 2(b).

(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

(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.

As to SOR 1.a, Applicant established that he has disputed that debt for several years. His basis for disputing the debt is reasonable.

Applicant understands that he might be held legally responsible for the debts he incurred by co-signing his daughter's loans if his daughter defaults. As to the car repossession debt alleged at SOR 1.b, he acted reasonably by trying to contact the lender to determine what the remainder after resale was and if he needed to pay that debt. But the lender did not respond and, other than listing the debt in his credit report, took no action against Applicant to collect any remainder after resale. Nor did the lender respond to Applicant's inquiry in March 2014. I conclude there is likely no remaining obligation for his daughter's car loan.

Applicant also might be legally responsible for his daughter's student loan debts, alleged at SOR 1.c and 1.d. However, those creditors have not contacted him in several years and did so only to get Applicant's help in getting his daughter to bring the loans current. As far as Applicant knows, his daughter has done what was needed to keep those loans current. Recent inquiries by Applicant about those loans have brought no response.

Applicant's current finances are sound. He and his wife live well within their means on social security, reverse mortgage funds, and a modest adjunct professor's salary. Applicant has always been willing to make good on his obligations; however, he was better able to offer substantial payments on his daughter's debts before 2012, when his clearance was rescinded.

Available information reasonably supports a conclusion that the debts alleged here are not reflective of Applicant's judgment and trustworthiness. Nor is it likely that his joint legal responsibility for his adult daughter's debts would cause him to commit illegal acts to generate funds with which to resolve those debts. He manages his personal finances responsibly, and he has an excellent reputation in the workplace based on his character and technical expertise. I have also assessed the available information within the context of the whole-person. Witness testimony, a letter of recommendation from the program manager he supports, and available information about his lengthy career in the defense industry all show Applicant to have the requisite integrity and reliability for access to classified information. A fair and commonsense assessment of all of the foregoing supports a conclusion that the security concerns raised by the Government's information are mitigated.

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.d: For Applicant

Conclusion

Based on this record, 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