



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-03553
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate security concerns about his financial problems. He accrued significant delinquent debt through unpaid credit cards and other past-due accounts. He is currently unable to pay or otherwise resolve any of the debts alleged in the SOR. Applicant has not sought credit counseling, and he did not establish that his financial problems are not likely to recur. His request for a security clearance is denied.

Statement of the Case

On February 10, 2012, 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 September 18, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On December 23, 2013, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on January 24, 2014, but he did not provide a response or other additional information within the 30 days allowed.⁵ The record closed on February 23, 2014, and the case was assigned to me on March 10, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$35,651 for eight delinquent or past-due debts alleged in SOR 1.a - 1.h. Applicant admitted, with explanations, all of the allegations. (FORM, Items 1 and 3). In addition to his admissions, I make the following findings of fact.

Applicant is 32 years old and has worked for defense contractors in administrative positions since February 2001. He was hired by his current employer in October 2004. (FORM, Item 5)

Applicant and his wife have been married since May 2003. They have three children, ages 10, 8, and 5. (FORM, Item 5)

When Applicant submitted his EQIP, he disclosed the delinquent debts alleged in SOR 1.c, 1.d, and 1.e. These debts total about \$23,500 and comprise 97 percent of the total debt at issue in the SOR. Credit reports obtained during the ensuing background investigation reflected the other debts listed in the SOR. Applicant has acknowledged that he "mismanaged" his credit cards, and that he has been unable to pay other debts as a result of the increased interest rates on his credit cards. SOR 1.c and 1.d are credit card accounts opened more than 10 years ago, but which Applicant has not paid since at least 2010. SOR 1.e is the past-due amount for an auto loan on which he has not made payments since 2010 (Applicant claims he still has the car.). According to the credit reports presented by the Government, most of Applicant's delinquent debt arose before 2010. (FORM, Items 5 - 9)

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.

⁵ See Directive, Enclosure 3, Section E3.1.7.

Applicant discussed his debts in a subject interview with a Government investigator on February 29, 2012. During that interview, Applicant claimed he intended to negotiate a debt consolidation and payment plan with a credit counseling company “very soon.” Applicant has not done so. (FORM, Item 6)

Applicant’s wife was brought to the United States from her native country when she was four years old. She was raised and educated in the United States, but she has always been an illegal immigrant under U.S. law. As an adult, it has been hard for her to find work outside the home because of her status. Since September 2012, she has been trying to acquire permanent resident status through a request for *Consideration of Deferred Action for Childhood Arrivals*, as provided for by U.S. immigration and naturalization regulations. In April 2013, Applicant filed a *Petition for Alien Relative* on her behalf. (FORM, Items 4 and 6)

In pursuit of his wife’s request for U.S. residency, Applicant has spent several thousand dollars in legal fees and other expenses. During his subject interview, and in response to DOD interrogatories and the SOR, Applicant has stated he is giving financial priority to the expenses associated with this wife’s residency request. In 2013, he spent more than \$5,000 in that effort. (FORM, Items 4 and 6)

In August 2013, Applicant submitted a personal financial statement in response to DOD interrogatories. That information showed Applicant has less than \$200 remaining each month after expenses, which included modest income from a second job. His expenses did not include his legal fees or any payments on debts listed in the SOR. (FORM, Item 6)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ 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

⁶ Directive. 6.3.

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 interest⁷ 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.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

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.¹⁰ 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.¹¹

Analysis

Financial Considerations

The information presented in the FORM, as well as Applicant's admissions in response to the SOR, are 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.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ Directive, E3.1.14.

⁹ Directive, E3.1.15.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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*). Between 2003 and 2010, Applicant accrued more than \$35,000 in delinquent debt. He acknowledged his debts resulted from mismanagement of his credit cards, and that he has not made any payments on those debts since at least 2010.

I have also considered as potentially applicable in this case, 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.¹²

I conclude that none of these mitigating conditions apply. Applicant's delinquencies are multiple and recent, insofar as they continue unresolved. He has not presented any information showing that his debts resulted from unforeseen or unusual circumstances. Applicant's use of money to support his wife's request for resident status in the U.S. does not change the fact that his debts became delinquent more than two years before that process began. Also, Applicant admitted that he mismanaged his personal credit to the point he could not meet his repayment obligations. Applicant has not sought credit counseling as he claimed he would during his subject interview. His current finances show only a marginal ability to meet his expenses. On balance, Applicant has not mitigated the security concerns about his financial problems.

¹² AG ¶ 20(f) (the affluence resulted from a legal source of income) has no relevance to these facts and circumstances.

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 32 years old, has been employed in the defense industry since 2001, is married and has three children. This information supports a presumption that he is a mature, responsible adult. However, the positive information about his personal circumstances is not sufficient to overcome the doubts about his suitability for access to classified information raised by the Government's information. Because protection of the national interest is the principal goal of these adjudications, 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.h:	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