



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 14-04517

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his history of indebtedness. His request for access to classified information is denied.

Statement of the Case

On January 15, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as required for his job with a defense contractor. During his background investigation, Applicant was interviewed on April 3, 2015, by a Government investigator. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

On November 9, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² On December 23, 2015, Applicant responded to the SOR and requested a decision without a hearing. On March 11, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material

¹ Required by Executive Order 10865, as amended, and by the Directive.

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

(FORM)³ in support of the SOR. Applicant received the FORM on April 2, 2016, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed after Applicant did not submit additional information before the May 2, 2016 deadline. The case was assigned to me on February 10, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$116,563 for three delinquent debts (SOR 1.b - 1.d); and that in February 2005, he filed a Chapter 7 bankruptcy petition through which he received a discharge of debt in May 2005 (SOR 1.a). In response, Applicant admitted all of the allegations. In his e-QIP, Applicant disclosed the tax debt alleged at SOR 1.b and the mortgage-related debt alleged at SOR 1.d. A credit report and bankruptcy records obtained during his background investigation further document all of the SOR allegations. Applicant also discussed his financial problems during his April 2015 interview. (FORM, Items 1 - 6) In addition to the facts thus established, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor, where he has worked since April 2013. Between 2003 and 2009, he worked as an independent contractor and was responsible for paying income tax through estimated quarterly payments. He also was required to file annual returns to account for his income and taxes. Between 2003 and 2009, Applicant did not pay his taxes or file his returns. He filed his returns in 2010 when he was trying to obtain federal employment. In 2011, a federal tax lien was entered against him for \$63,698 in past-due taxes. He claims he has been paying \$230 each month through a repayment plan with the IRS, but he provided no corroborating documentation of that claim. (FORM, Items 2, 3, and 6)

Applicant bought a house in August 2004 for \$145,000. In late 2005, he cashed out the value equity of the house by refinancing his mortgage for \$200,000. He did not realize the new mortgage had an adjustable rate until the monthly payment increased by \$100 in 2007. He stopped paying the mortgage for two or three months to get the lender to consider a modification he could afford. A new loan was issued and Applicant resumed making payments. In 2011, Applicant rented the house to a friend because Applicant had to move to another state. However, by late 2012 or early 2013, the house was empty, damaged, and unmarketable. The lender would not approve a short-sale because Applicant was still current on the mortgage. Applicant stopped paying the mortgage and the property eventually went into foreclosure. Applicant has not provided any information about the disposition of the property or what he has done to address any remaining mortgage obligation. (FORM, Items 2 and 6)

In February 2005, Applicant filed for Chapter 7 bankruptcy protection. He did so to address debts he had incurred because he was living beyond his means. His petition reported \$345,991 in liabilities against \$300,365 in assets. His debts were discharged in May 2005. (FORM, Items 2 and 6)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included five exhibits (Items 1 - 5) proffered in support of the Government's case.

⁴ Directive. 6.3.

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 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. 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.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

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.⁸ 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.⁹

Analysis

Financial Considerations

The Government met its burden of production in support of the allegations in the SOR. The facts established herein raise 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

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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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*); 19(c) (*a history of not meeting financial obligations*); and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*).

By contrast, the record does not support any of the mitigating conditions listed at AG ¶ 20. Applicant deliberately failed to comply with his tax reporting and payment obligations between 2003 and 2009. He did not present any information to support his claim that he is repaying a large debt to the IRS for those tax years. In 2005, he filed for Chapter 7 bankruptcy protection for a discharge of significant delinquent debt incurred because he was living beyond his means. Applicant has continued to experience financial problems over the ensuing decade, but has did not produce any information that shows he acted responsibly in the face of those problems, that he as sought professional financial assistance, or that he made any good-faith efforts to pay or otherwise resolve his debts. Security concerns under this guideline are not mitigated.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). This record raises significant doubts about Applicant's suitability for access to classified information. Applicant is not required to be debt free; however, the Government is entitled to assurances that his financial problems are not the result of poor judgment and that Applicant is trying to resolve them to the best of his ability. Because Applicant has not shown this to be the case, doubts remain about his judgment and reliability. Because protection of the national interest is the principal focus 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.d:	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