



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-01847

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

09/12/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant is repaying his past-due taxes and has resolved three other delinquent debts to the same credit card company. His request to be eligible for access to classified information is granted.

Statement of the Case

On April 16, 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, a government investigator interviewed Applicant on July 15 and 18, 2014. After reviewing the completed background investigation, Department of Defense (DOD)

adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have access to classified information.¹

On February 20, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² At the time the SOR was written, the DOD CAF applied the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On December 10, 2016, the Director of National Intelligence (DNI) issued a new set of AGs, effective for all security clearance adjudications conducted on or after June 8, 2017. I have based my decision in this case on the June 8, 2017 AGs.³

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On May 2, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on May 9, 2016, and he had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM. Applicant timely responded to the FORM and provided additional documents in support of his response.

I received the case on June 1, 2017. Because the record had closed nearly a year beforehand, I re-opened the record on June 2, 2017 to allow the parties to update the information presented in the FORM and Applicant's response thereto.⁵ This case was ready for decision on June 6, 2017, after I received submissions from Department Counsel and Applicant.⁶

Findings of Fact

The Government alleged in the SOR that Applicant owes \$48,682 in unpaid taxes, which the IRS is enforcing through tax liens against Applicant since 2013 (SOR 1.a, 1.b, and 1.e); and that Applicant owes the same creditor \$4,430 for three delinquent credit card accounts (SOR 1.c, 1.d, and 1.f). Applicant admitted all of the SOR allegations and provided information showing he paid the credit card accounts, and that he had a payment plan with the IRS to satisfy his tax debts. In addition to the facts established by Applicant's Answer, I make the following findings of fact.

Applicant is a 64-year-old employee of a defense contractor for whom he has worked since February 2014. He previously worked in the IT department of a construction company from 1993 until corporate downsizing eliminated his job in late

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

² See Directive, Enclosure 2.

³ My decision in this case would have been the same under either version of the guidelines.

⁴ See Directive, Enclosure 3, Section E3.1.7. In the FORM, Department Counsel relies on eight enclosed exhibits (Items 1 - 8).

⁵ See Order of Administrative Judge, dated June 2, 2017, included as Hearing Exhibit (Hx.) 1.

⁶ Department Counsel submitted a credit report dated June 5, 2017, as FORM Item 9. Applicant submitted a one-page statement dated June 6, 2017, augmenting his earlier response to the FORM.

2013. A four-month period of unemployment preceded his current position. Applicant and his wife have been married since May 1981 and have three adult children. (FORM, Item 4)

When Applicant submitted his e-QIP, he disclosed that he had not paid his federal income taxes for 2005, 2008, 2009, 2010, 2011, and 2012. The IRS is enforcing Applicant's federal tax debts through the three tax liens alleged at SOR 1.a, 1.b, and 1.e. Applicant incurred his tax debts after several years of underpaying his taxes each year because he was not filing correctly. Subsequently, he did not have enough money to pay the balance due with his annual tax returns. In about 2006, he retained a tax advocacy company to help him resolve his tax problems, but that company turned out to be disreputable and took his money without taking any action for him. Thereafter, Applicant was overwhelmed and for several years took no action to resolve his tax problems.

In 2011, Applicant retained another tax resolution firm. In July 2014, when a Government investigator interviewed Applicant for his clearance, Applicant stated he had established a repayment plan with the IRS and was paying \$579 each month on his tax debt. In his e-QIP and in his responses to the SOR and FORM, Applicant again claimed he was making monthly payments of \$579 to the IRS. Applicant's SOR Answer contains a copy of his monthly installment agreement payment due as of February 17, 2016. It also shows his total tax debt at that point had fallen from just over \$48,000 to just over \$40,000. Credit reports submitted by the Government in the FORM and in response to my order re-opening the record show two of the three IRS liens against Applicant are still in place. (FORM, Items 2, 4, 8, and 9)

Applicant also owed at least \$20,000 in past-due credit card debts to the creditor listed in SOR 1.c, 1.d, and 1.f. Applicant's Answer, along with a credit report submitted by the Government on June 5, 2017, established that Applicant satisfied these debts in 2011. (Response to FORM; FORM, Items 2, 4, 8, and 9)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁷ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) 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

⁷ Directive. 6.3.

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 interest⁸ 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.⁹ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.¹⁰

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.¹¹ 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.¹²

Analysis

Financial Considerations

The Government's information about Applicant's tax and credit card debts reasonably raised the security concern expressed at AG ¶ 18:

Failure 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 or sensitive information. Financial

⁸ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹ Directive, E3.1.14.

¹⁰ Directive, E3.1.15.

¹¹ See *Egan*, 484 U.S. at 528, 531.

¹² See *Egan*; Adjudicative Guidelines, ¶ 2(b).

distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, Applicant's conduct requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

Although he filed his tax returns as required, Applicant failed to pay the balance of taxes due with those returns. He also incurred significant delinquent credit card debt. His tax debts and credit card debts were enforced by liens against him.

By contrast, the record evidence as a whole supports application of the following AG ¶ 20 mitigating conditions:

- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant established in his response to the SOR that he had resolved his credit card debts as early as 2011. Available information about his tax repayment efforts shows he is engaged in a repayment plan with the IRS and that he has paid off one of the liens against him so far. The record on this issue tends to support his claim that he has been trying to resolve his taxes and other financial issues for the past few years. On balance, I conclude the security concerns raised by Applicant's outstanding debts are 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(d). Available information shows Applicant has been addressing his financial problems in a reasonable way and that he is unlikely to experience a recurrence of his past financial problems. A fair and commonsense assessment of this record shows that the security concerns expressed through the SOR 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.f: 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