



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-03179

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro Se*

11/04/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred significant delinquent or past-due debt due, in large measure, to a divorce and a long period of unemployment. Although he satisfied all but one of the eight civil judgments against him, numerous other debts remain unresolved. Applicant also has not filed his federal and state income tax returns for the past five tax years as required. Finally, Applicant deliberately omitted from his most recent security clearance application relevant adverse financial information in his background. He did not present information sufficient to mitigate the resulting security concerns about his finances and personal conduct. Applicant's request for a security clearance is denied.

Statement of the Case

On July 15, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On December 12, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for financial considerations (Guideline F) and personal conduct (Guideline E). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned me on May 18, 2016, and I convened a hearing on June 27, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 3.³ Applicant testified in his own behalf. A transcript of the hearing (Tr.) was received on July 6, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed at least⁴ \$74,500 for 26 delinquent or past-due debts (SOR 1.a - 1.z). It also was alleged that Applicant deliberately made a false official statement when he submitted his EQIP but omitted the civil judgment debts alleged at SOR 1.h - 1.o. In response, Applicant admitted all of the SOR allegations (Answer).

At the hearing, Applicant disclosed that he has not filed federal or state income tax returns as required since 2011, when he filed his returns for the 2010 tax year. Department Counsel moved to amend the SOR to conform with the evidence, as allowed by Section E3.1.17 of the Directive. I granted the Government's motion without objection from Applicant. Accordingly, the following allegation was added to the SOR as subparagraph 1.aa under Guideline F:

You failed to file your federal and state tax returns for tax years 2011 through 2015, as required.

Applicant was afforded an opportunity at the hearing to respond to the new allegation. He admitted SOR 1.aa. (Tr. 69 - 71) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 66 years old and works for a defense contractor as an instructor. Applicant was hired for that position in April 2014 after having been unemployed since September 2011. For a year before that, he worked for a defense contractor but the contract on which he was working expired and he lost his job. From May 2001 until August 2011, Applicant was a manager in a large telecommunications corporation, but was laid off during a corporate downsizing after he declined to take a position for significantly less pay. (Gx. 1; Tr. 64 - 65)

Applicant served in the U.S. Army from March 1973 until retiring as a master sergeant in August 2001. He held a security clearance throughout most of his military career. His current application was submitted because his clearance lapsed after he retired. (Gx. 1; Tr. 5 - 6)

² 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).

³ At Department Counsel's request, I have included, as Hearing Exhibit (Hx.) 1, a copy of the March 16, 2016 letter that forwarded Gx. 1 - 3 to Applicant, in accordance with Directive Section E3.1.13. Also included, as Hx. 2, is a list identifying those exhibits.

⁴ No dollar amount was specified for the debts alleged at SOR 1.d - 1.g.

Applicant was married from August 1973 until June 2010, when he divorced. He has three grown children, one of whom is a single mother to whom Applicant provides occasional financial assistance. After he and his ex-wife separated in about 2009, Applicant was obligated to pay his ex-wife about \$3,000 each month. She still receives half of his military retired pay and half of his social security benefit. (Gx. 1; Tr. 19, 43 - 44, 63 - 65)

Applicant incurred most of the debts alleged in the SOR while he and his ex-wife were divorcing and while he was unemployed. The two largest debts (SOR 1.i and 1.n) were debts enforced by civil judgments to collect the remainders due from delinquent car loans after the collateral vehicles were repossessed and resold. Although Applicant has satisfied both judgments, he believes SOR 1.n actually represents a car loan attributable to his son, who is Applicant's namesake. Applicant did not present any information to support this claim. (Answer; Gx. 1 - 3; Tr. 18, 31, 36 - 37)

The allegations at SOR 1.h - 1.o were for debts being enforced by civil judgments against Applicant. The credit report at Gx.3 shows, and the Government has conceded, that all but one (SOR 1.m) were satisfied between 2009 and 2013. Applicant has not resolved SOR 1.m because he does not have enough information or money to do so. Applicant also has not resolved the debts at SOR 1.a - 1.g and 1.p - 1.z. (Answer; Gx. 1- 3; Tr. 39 - 42)

Not long after he was hired for his current job in 2014, Applicant enlisted the services of a credit-repair company. For \$80 monthly, that company researches entries in Applicant's credit history to help Applicant verify accounts. The service does not counsel Applicant about financial management or help him set up payment plans for his debts. (Tr. 49 - 50, 65 - 66)

Applicant is currently meeting all of his regular monthly expenses and he has not incurred any new unpaid debts. After expenses, he has less than \$500 remaining each month. In the course of his testimony about his current financial condition, he revealed that he has not filed his federal or state income tax returns as required since 2011, when he filed his tax year 2010 returns. He stated that the IRS has contacted him about his past-due filings, but he has not yet taken any action to bring his filing status up to date. (Tr. 45 - 59)

The only adverse financial information Applicant disclosed when he submitted his EQIP were the debts at SOR 1.e and 1.i. He did not disclose the civil judgments alleged at SOR 1.h - 1.o even though he had appeared in court to answer at least one of the underlying lawsuits against him. The EQIP question at issue was part of Section 26 (Financial Record) required disclosure of any judgments entered against him in the previous seven years (in this case, since 2014). Although Applicant held a security clearance for over 20 years in the Army, he claimed he misunderstood the question, thinking it addressed criminal matters. He also testified that his omissions resulted from being rushed to complete the EQIP. In response to another question in EQIP Section 26, Applicant did not disclose in his EQIP his failure to file tax returns after 2011. (Answer; Gx. 1; Tr. 36 - 39, 60)

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 (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 interest⁶ 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.⁷ 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.⁸

⁵ See Directive. 6.3.

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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

Analysis

Financial Considerations

Available information is sufficient to support the SOR allegations under this guideline. The facts established reasonably raise a security concern about Applicant's finances that is 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, this record 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*). Applicant's financial problems began around the time he and his wife separated in 2009. While he resolved several debts between 2009 and 2013, as many as 19 other debts remain unpaid. He also has failed to file his federal and state income tax returns since tax year 2010.

I have also considered the following pertinent 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.

AG ¶ 20(a) is not available to Applicant as he still has at least 19 unresolved delinquencies. The mitigating conditions at AG ¶¶ 20(b) and 20(d) are partially applicable here. Applicant's debts arose from a period of unemployment that occurred not long after his divorce was finalized. He also acted to resolve all but one of the civil judgment debts against him. However, his current finances do not reflect an ability to resolve his remaining debts and there is no record of any recent action to contact creditors or otherwise pay his remaining debts. Although Applicant is using a credit-

repair company to get information about his credit history, he is not receiving counseling or other assistance that may result in paying off his past-due debts. Finally, Applicant has not addressed his past-due income tax filings despite being contacted by the IRS. AG ¶ 20(c) is not applicable here.

As to AG ¶ 20(e), Applicant implied that one or more debts attributable to him may actually belong to his son. However, Applicant did not present any corroboration of this claim. On balance, I conclude Applicant did not mitigate the security concerns raised by the Government's information about his finances.

Personal Conduct

The record evidence as a whole shows that Applicant deliberately omitted from his EQIP relevant adverse information about his finances. While he disclosed two of the debts in his background, the Government's information and an assessment of all of the circumstances regarding Applicant's intent at the time he completed the EQIP persuade me he knew he was required, yet decided not to disclose the civil judgments alleged at SOR 1.h - 1.o. The EQIP question at issue is straightforward and requires disclosure of judgments in the preceding seven years, even if they had been satisfied at the time the EQIP was completed. I also considered as probative of Applicant's intent his conflicting explanations for why he omitted the information. Applicant stated initially that he did not understand the question at issue, thinking it addressed criminal matters. This is not tenable given his experience with applying for security clearances in the Army, and because the question is one of several squarely addressed in the EQIP section regarding financial matters. Later in the hearing, Applicant testified he was rushed in completing the EQIP. Neither claim was credible. Further, even though it was not alleged in the SOR, the fact that Applicant also did not disclose his failure to file his income tax returns after 2011 is relevant, in that, it is a circumstance that tends to show that Applicant's omissions were deliberate.

All of the foregoing reasonably raises a security concern about Applicant's judgment and trustworthiness that is expressed at AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, available information requires application of the disqualifying condition at AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I also considered the following AG ¶ 17 mitigating conditions:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Available information does not support application of any of these adjudicative factors. On balance, I conclude the security concerns under this guideline have not been mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant did not present any information about his reputation in the workplace or community, and little is known about his military service apart from the fact that he was honorably discharged after a 28-year career as a senior noncommissioned officer. While his military service is an important factor in this adjudication, without more, significant doubts remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against 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.aa:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant

Conclusion

In light of all of the foregoing, 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