



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-03948

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro Se*

02/22/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not file his federal and state income taxes as required for the tax years 2010 and 2011. He also accrued a significant amount of unpaid debt. His financial problems coincided with a one-year period of unemployment that ended in September 2012. Most of his debts remain unresolved. Applicant did not establish that he is likely to correct his financial problems in the near future. Applicant's request for a security clearance is denied.

Statement of the Case

On February 22, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew his eligibility for 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 January 16, 2016, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned me on June 6, 2016, and I convened a hearing on August 11, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified and submitted Applicant's Exhibits (Ax.) A - D. All exhibits were admitted without objection. I left the record open after the hearing to receive additional relevant information. The record closed on August 15, 2016, when I admitted, without objection, Applicant's post-hearing submission identified as Ax. E.⁴ A transcript of the hearing (Tr.) was received on August 22, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant had not filed his federal or state income tax returns as required for the 2010 and 2011 tax years (SOR 1.a); and that he owed at least⁵ \$52,397 for 29 delinquent or past-due debts (SOR 1.b - 1.dd). In response, Applicant denied, with explanations, the allegations at SOR 1.g, 1.i, 1.t - 1.v, 1.x - 1.z, 1.bb, and 1.dd. He admitted, with explanations, the remaining allegations. (Answer) Applicant disclosed his unfiled tax returns in his EQIP, but he did not disclose therein any of the debts addressed in SOR 1.b - 1.dd. Those allegations are supported by two credit reports produced by the Government. (Gx. 1 - 3) In addition to facts thus established, I make the following findings of fact.

Applicant is 41 years old and works for a defense contractor in a position for which he was hired in October 2012. He was married from July 2001 until March 2005. He has no children from that marriage, but he has been living with his fiancée and her three children (ages 18, 16, and 12) since early 2013. (Gx. 1; Tr. 70 - 72)

Applicant started his current job after being unemployed for three months. Applicant served in the Army National Guard from June 1992 until April 1994. He enlisted in the Marine Corps in May 1995 and was trained in data communications. He first received a security clearance in 1996. Applicant was honorably discharged as a sergeant (E-5) in December 2007. Thereafter, he worked in data communications for two different defense contractors until he was laid off through a reduction in force in September 2011. Applicant next worked from April 2012 until August 2012 doing cable repair, which paid him significantly less than what he previously had earned. (Answer; Gx. 1; Tr. 66 - 68)

Applicant did not file his federal and state income tax returns as required for 2010 and 2011. He attributes his failure to file to his own forgetfulness and to a period of depression after he was laid off in September 2011. Around that time, he consulted with

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 I have included as Hearing Exhibit (Hx.) 1, a list identifying those exhibits.

⁴ Department Counsel's email forwarding Ax. E, and waiving objection thereto is included as Hx. 2. Ax. E consists of an IRS tax year 2011 statement, dated September 22, 2014, of taxes past due, and two employment pay statements, dated July 22 and August 5, 2016.

⁵ SOR 1.m - 1.q and 1.s did not list amounts due.

a counselor from the Department of Veterans Affairs (VA) a few times and claims he has a 20 percent VA disability but did not specify the basis of that benefit and did not otherwise document his claims in this regard. Applicant further claimed that he filed his past-due returns in either 2013 or 2014 but has not produced those returns despite being given extra time for post-hearing submissions. He also claimed he has been in repayment for the 2010 and 2011 taxes due, but the repayment information he submitted addresses repayments for the 2008, 2009, and 2013 tax years. His information shows that a \$132 payment has been consistently deducted from his bank account since at least August 2013. To further support his claim that he has filed his past-due tax returns, Applicant also relied on information showing that he was entitled to refunds of his state taxes; however, the information he provided addressed only the 2014 and 2015 tax years. Available information does not support Applicant's claims that he has filed the past-due returns referenced in SOR 1.a. (Answer; Gx. 1; Ax. B - D; Tr. 32, 52 - 57, 70 - 73)

Before Applicant was laid off in 2011, he had attended technical schools for which he obtained student loans, totaling \$18,151, for tuition and other expenses. He was unable to make required payments on his student loans and they went into default, as alleged in SOR 1.c - 1.f. In February 2013, Applicant's pay was garnished at a rate of \$60 per pay period to satisfy those debts. As of July 2016, those debts had been resolved through a combination of the wage garnishment, diverted state income tax refunds over five years totaling \$4,191, and Applicant's use of funds from a personal retirement account. Two pay statements from July and August 2016 show that the garnishment of Applicant's pay has been cancelled. Available information shows that the debts at SOR 1.c - 1.f have been resolved. (Answer; Gx. 2 - 4; Ax. A; Ax. C; Ax. E; Tr. 33 - 34, 51 - 53, 60)

As to the remaining debts alleged in the SOR, all of them have been documented in the Government's information. Applicant readily admits that some of the debts are his, but he disputes some and has no information about others. The medical debts alleged at SOR 1.v and 1.y arose when he was unemployed and had no medical insurance. The debt at SOR 1.b is owed for furniture purchased through retailer financing. Applicant claims the debt at SOR 1.aa is attributable to an ex-girlfriend and that it was resolved long ago. He made the same claim regarding SOR 1.cc, an unpaid traffic ticket from a state where he lived while in the military. He did not provide any documentary information to support his claims, nor did he document the bases for his disputes or indicate whether those disputes have been resolved. Applicant has not contacted any of his creditors to verify or negotiate a resolution of his debts. (Answer; Gx. 2 and 3; Tr. 36 - 37, 45 - 46, 49)

Applicant's monthly take-home pay is about \$3,200 each month. After making his IRS payment of \$132, and after meeting all of his regular monthly expenses (rent, car note, insurance, utilities, etc.), Applicant estimates he has about \$200 remaining. His expenses do not include any payments to debts listed in the SOR. Applicant's fiancée works part time and uses her income to pay her car loan and cell phone bill. Applicant acknowledged at hearing that he has occasionally been late in paying either his rent or his car note. In 2010, he consulted with a bankruptcy attorney but could not afford the fees needed to actually file a petition. The debts at SOR 1.m - 1.p are for different accounts (e.g., loans, credit cards, etc.) with the same banking creditor. Applicant stopped paying these accounts on advice of the bankruptcy attorney. After Applicant did not go forward with a bankruptcy petition, he did not contact the bank to try and resolve his debts with them. Applicant has not sought or received any financial counseling or other professional financial guidance. (Ax. E; Tr. 38 - 40, 47 - 48, 61 - 66, 73 - 75)

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 (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 interest⁷ 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.⁸ 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.⁹

⁶ See Directive. 6.3.

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

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; AG ¶ 2(b).

Analysis

Financial Considerations

The Government established its case through sufficient and reliable information that supports the SOR allegations under this guideline. The facts established by this record 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*).

I also have 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; and
- (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.

Applicant presented information that showed the past-due student loans alleged at SOR 1.c - 1.f have been resolved. However, most of those obligations were satisfied through involuntary wage garnishment and diversion of state tax refunds for the 2014 and 2015 tax years. Further, he did not produce sufficient information from which to conclude that he met his burden of persuasion in response to the remaining SOR allegations. Based on available information, I cannot conclude that Applicant has filed his past-due tax returns, as alleged at SOR 1.a, or that he has taken any action to pay or otherwise resolve any of the debts alleged at SOR 1.b, and 1.g - 1.dd.

As to Applicant's current finances, after making a monthly payment to the IRS for a tax debt unrelated to the issue of his unfiled tax returns, he has little money remaining each month with which to resolve any of the remaining debts. Additionally, Applicant has not sought out any financial counseling that might assist him in managing his finances and establish a plan to address his debts. It is unlikely, therefore, that his remaining financial problems will be resolved in the foreseeable future. On balance, I

conclude Applicant has not mitigated the security concerns presented by the record evidence as a whole.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Specifically, I have considered Applicant's honorable military service, the fact that he has held a security clearance for over 20 years, and the uncontrollable circumstances that have contributed to Applicant's financial problems. Nonetheless, it was incumbent on Applicant to show that he is addressing the security concerns raised by the adverse information produced during his most recent background investigation. Based on this record, I conclude that doubts raised by Applicant's financial problems persist. Because protection of the national interest is the principal aim of these adjudications, any remaining 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:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	Against Applicant
Subparagraphs 1.c - 1.f:	For Applicant
Subparagraphs 1.g - 1.dd:	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