



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-04046

Appearances

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

12/07/2016

Decision

MALONE, Matthew E., Administrative Judge:

Security concerns raised by Applicant's arrests between 2008 and 2012 are mitigated by the passage of time without recurrence and by Applicant's change of personal and professional circumstances. Additionally, the record evidence as a whole shows Applicant's financial problems are no longer a security concern. Applicant's request for a security clearance is granted.

Statement of the Case

On June 20, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew 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 29, 2016, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for financial considerations (Guideline F) and criminal conduct (Guideline J).³ 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 - 4.⁴ Applicant testified in his own behalf. I left the record open after the hearing to receive additional relevant information. The record closed on July 11, 2016, when I admitted Applicant's post-hearing submissions, admitted as Applicant's Exhibits (Ax.) A and B.⁵ A transcript of the hearing (Tr.) was received on July 6, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$33,096 for 14 past-due or delinquent debts (SOR 1.a - 1.n). Applicant responded by admitting the medical debts at SOR 1.b - 1.d, 1.f, 1.i, 1.k, 1.m, and 1.n. He stated that he planned to pay those debts using his next income tax refund. Applicant disputed the debts at SOR 1.e and 1.g. He denied the debts at SOR 1.a, 1.h, and 1.j, claiming he had paid those debts.

Under Guideline J, the Government alleged that Applicant had been charged or arrested for five criminal offenses (SOR 2.a - 2.e) between 2008 and 2012. Applicant admitted, with explanations, all of these allegations.

Applicant's admissions, his disclosures in his EQIP (Gx. 1), two credit reports (Gx. 2 and 3), and an FBI criminal history report (Gx. 4) support the SOR allegations against Applicant. In addition to the facts thus established, I make the following findings of fact.

Applicant is 30 years old and works for a defense contractor in a position for which he was hired in December 2012. Applicant served as a communications technician in the U.S. Marine Corps from August 2004 until being honorably discharged in August 2008. Thereafter, he was unemployed until August 2009, when he found work as a sales associate until being hired for his current job. Applicant and his wife have been married since February 2007. They have three children, ages 8, 2, and 1. His wife is a stay-at-home mother. (Gx.1; Tr. 36 - 37)

While in the Marines, Applicant held a security clearance and twice deployed for combat operations in Iraq. Among his awards and decorations, he earned a Combat

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 the outset of the hearing, Department Counsel moved to strike SOR 3, which contained one allegation under Guideline G (Alcohol). (Tr. 8 - 9)

⁴ At Department Counsel's request, I have included, as Hearing Exhibit (Hx.) 1, a copy of the May 2, 2016 letter that forwarded Gx. 1 - 4 to Applicant, in accordance with Directive Section E3.1.13. Also included, as Hx. 2, is a list identifying those exhibits.

⁵ Department Counsel's email forwarding Ax. A and B, and waiving objection thereto, is included as Hx. 3. Ax. A (two pages) is information from Applicant's bank account and a recent credit score. Ax. B (24 pages) contains information about Appellant's military career. It also contains civilian job performance information and letters of recommendation.

Action Ribbon while in Iraq. After his discharge from the military in 2008, Applicant was unemployed and without health insurance for about a year. In September 2008, Applicant had to have his appendix removed. The debt at SOR 1.k reflects the unpaid costs of that procedure. Applicant testified that he sought assistance from the Department of Veterans Affairs (VA) through his local Veterans of Foreign Wars (VFW) post. At some point, he had to resubmit his paperwork through the VFW. Applicant does not know the status of his application, but it does not appear on the more recent of the two credit reports submitted by the Government. (Answer; Gx. 1 - 3; Tr. 31 - 33, 49 - 51)

The debts alleged in the SOR arose while Applicant was unemployed after leaving the Marines. The debt at SOR 1.a is owed to a credit union, and he claims he paid this debt in June 2014. Available information shows he paid a different, smaller debt owed to the same credit union. Applicant's post-hearing submissions did not show he paid the SOR 1.a debt, which was still reflected as a charged-off account as of April 2015. (Answer; Gx. 1 - 3; Ax. A; Tr. 28, 56 - 57)

The medical debts alleged at SOR 1.b - 1.d, 1.f, 1.i, 1.m, and 1.n total \$4,872. They are for treatment provided to Applicant's oldest child before Applicant had health insurance. Although he stated in his February 2016 Answer that he would use his tax refund to pay these debts, Applicant provided no information showing he has paid or otherwise resolved these debts. (Answer; Gx. 2; Gx. 3; Tr. 33 - 34)

Applicant disputes the debts at SOR 1.e and 1.g. He claims he returned the merchandise that is the subject of those debts and that he could document his disputes. Applicant did not provide any information to support his claims, but these debts are not listed in the 2015 credit report presented by the Government. (Answer; Gx. 3; Tr. 11, 29)

Applicant also disputes the debt at SOR 1.h, a past-due cell phone account. He claims the carrier told him his account would be suspended while he was deployed. Applicant's dispute is reflected on the 2015 credit report presented by the Government. (Answer; Gx. 3; Tr. 11)

Applicant also claimed he paid the debt at SOR 1.j, a retail account for \$254. That debt is still reported in the 2015 credit report as a charged-off business loss. (Answer; Gx. 3; Tr. 28)

The debt at SOR 1.l arose in 2009 when Applicant deposited a worthless check he received for working on someone's house. Applicant was unable to get the person who wrote the check to reimburse him. This debt is not reflected in the 2015 credit report presented by the Government. (Answer; Gx. 3; Tr. 30)

Applicant testified that his current finances are sound and his credit score is improving. He averred that he has about \$350 remaining each month after expenses, but he did not present information showing that he is making payments on any of his debts. Since 2014, Applicant has not incurred any new unpaid or past-due debts. Aside from briefly enrolling in a service that assisted him in disputing or verifying the debts attributed to him, Applicant has not sought or received any professional assistance with his finances. (Ax. A; Tr. 34 - 35, 37 - 40)

Between 2008 and 2012, Applicant was arrested or charged with four criminal offenses. The allegations at SOR 2.a and 2.b address a single incident. In July 2012, Applicant and his wife went out with another couple to celebrate Applicant's wife's

birthday. While driving home after dropping off the other couple at the end of the evening, Applicant and his wife were pulled over. Unbeknownst to Applicant, the other couple had left a cup with the remains of an alcoholic beverage in the car. Applicant was charged with having an open container of alcohol, but the charge was later resolved when he pleaded guilty to a lesser charge of reckless driving for not staying in his lane, the reason he was pulled over in the first place. (Answer; Gx. 1; Gx. 4; Tr. 46 - 47)

In April 2011, Applicant fell asleep at the wheel, his car jumped the curb and hit a utility box. He then swerved back and hit a parked car. He called the police but after 30 minutes he walked to his house nearby and waited for them there. As alleged in SOR 2.c, Applicant was charged with leaving the scene of an accident and injury to real property. In June 2011, he pleaded guilty to injury to real property. (Answer; Gx. 1; Gx. 4; Tr. 44 - 45)

In September 2010, Applicant became involved in an altercation while playing in a soccer game. The fight escalated beyond the usual pushing and shoving that often takes place in sporting contests and Applicant injured the other player. As alleged at SOR 2.d, Applicant was arrested and charged with assault and inflicting serious injury. He later pleaded guilty to simple assault, for which he was fined and placed on six months of probation. (Answer; Gx. 1; Gx. 4; Tr. 43 - 46, 52)

Finally, as alleged at SOR 2.e, Applicant was arrested and charged in April 2008 with assault on a female. He and his wife were arguing loudly and the police were called. Applicant admitted he grabbed his wife and the police took him into custody. He was later released on his own recognizance, and the charge was later dismissed. (Answer; Gx. 1; Gx. 4; Tr. 42 - 43, 45)

Applicant was a superior Marine, but he struggled to adjust to civilian life after leaving the military. He was unemployed for about a year and may have been suffering from depression. He eventually started participating in group counseling at his local VFW post, and he is now active in his community through his work with other Marines and with youth groups. Applicant also obtained technical training that helped him get the job he has now. He has a good reputation at work and is highly regarded for his hard work, reliability, and trustworthiness. (Ax. B; Tr. 23 - 24, 25 - 26, 40, 52 - 56)

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

⁶ See Directive. 6.3.

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

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*) and 19(c) (*a history of not meeting financial obligations*). Applicant accrued significant unpaid debt that remains largely unresolved.

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).

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;

(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.

The mitigating conditions at AG ¶¶ 20(a) and 20(b) apply to some of Applicant's debts. Applicant was unemployed after leaving the Marines in 2008. The largest of his debts – a \$21,754 medical bill alleged at SOR 1.k – resulted from his appendectomy shortly after his discharge but before he found work and had health insurance. So, too, the medical debts for his oldest child's care alleged at SOR 1.b - 1.d, 1.f, 1.i, 1.m, and 1.n, arose before Applicant was covered. The SOR 1.k debt no longer appears on his credit history. Aside from the passage of time as a reason the debt is no longer reported, Applicant offered that he sought assistance from the VA to resolve this debt. He did not, however, document his claim despite having extra time after the hearing to do so. Applicant also has stated his intent to pay the other medical debts using his tax refund, but he failed to document that claim as well. Thus, the effect here of AG ¶¶ 20(a) and 20(b) is limited, at best. Only the medical debt at SOR 1.k is resolved for Applicant.

The mitigating condition at AG ¶ 20(d) is not applicable. Applicant stated that he paid the debts at SOR 1.a and 1.j, but he did not document his claims, and both debts are still reported in his credit history.

The mitigating condition at AG ¶ 20(e) applies to Applicant's claims that he disputed the debts at SOR 1.e, 1.g, and 1.h. The SOR 1.h dispute is noted in one of the credit reports produced by the Government. SOR 1.e and 1.g debts are no longer listed. All three debts are resolved for Applicant.

The mitigating condition at AG ¶ 20(c) does not apply, insofar as Applicant did not present any documentation about credit counseling or other professional assistance. Nonetheless, it is reasonable to conclude from the absence of any new past-due or delinquent debts since he started in his current position, that his financial problems are under control. Applicant is meeting his current obligations and has about \$350 remaining each month after expenses. Available information suggest the total remaining outstanding debt is now about \$10,055, or about 30 percent of the total alleged in the

SOR. The record also shows that Applicant's past financial problems do not accurately reflect on his current good judgment and trustworthiness. Available information shows that Applicant is unlikely to experience future financial problems and that he will work to resolve his remaining past-due debts. On balance, I conclude the security concerns about Applicant's finances are mitigated.

Criminal Conduct

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 criminal conduct between 2008 and 2012 that is addressed at AG ¶ 30, as follows:

Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

More specifically, the record requires application of the disqualifying conditions at AG ¶¶ 31(a) (*a single serious crime or multiple lesser offenses*) and 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*).

By contrast, the same information requires application of the following mitigating conditions at AG ¶ 32

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's circumstances since he left the military have changed significantly for the better. He engaged in counseling through the VFW, obtained technical education to improve his employment opportunities, and he has been active in the community with young people and other veterans. His last criminal offense arose from the actions of someone else (the couple who left a drink in his car), and there have been no other adverse interactions with law enforcement in the ensuing four years. It is unlikely that Applicant's criminal conduct will recur, and the security concerns under this guideline are mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a combat veteran who had difficulty adjusting to civilian life for a few years. His circumstances are now stable and he has established a solid reputation in the workplace and his community. His adverse conduct is unlikely to recur and his financial problems no longer present a security concern. A fair and commonsense assessment of the record as a whole shows the security concerns raised by the Government's information 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.n:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 2.e:	For Applicant
Paragraph 3, Guideline G:	WITHDRAWN
Subparagraph 3.a:	Withdrawn

Conclusion

In light of all of the foregoing, 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