



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-04472

Appearances

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

11/17/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred significant delinquent or past-due debt between 2009 and 2014. His debts remain unresolved and he did not present information sufficient to mitigate the resulting security concerns about his finances. Applicant's request for a security clearance is denied.

Statement of the Case

On July 23, 2014, 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

On December 12, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for

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

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).

financial considerations (Guideline F). 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 28, 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 13, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$59,605 for eight delinquent or past-due debts (SOR 1.a - 1.h). The debt alleged at SOR 1.a constitutes about 91 percent of the total debt at issue. In response, Applicant denied SOR 1.c and 1.g, explaining that he disputes their validity. He admitted the remaining allegations (Answer). All of the SOR allegations are established by Applicant's admissions, by his disclosures in response to EQIP financial questions (Gx. 1), by two credit reports obtained during his background investigation (Gx. 2 and 3), and by his hearing testimony. In addition to the facts thus established, I make the following findings of fact.

Applicant is 33 years old and works for a defense contractor in an information technology (IT) position for which he was hired in July 2014. Applicant served in the United States Marine Corps from March 2005 until March 2014, when he was honorably discharged. He was unemployed for a few months between his discharge and the start of his current employment. A security clearance Applicant first received while on active duty was last renewed in November 2010. (Gx. 1)

Applicant has never been married, but as of the hearing, he was engaged to be married. He and his fiancée have cohabited since about October 2015. Applicant has a five-year-old child from a previous relationship. Through an informal agreement with the child's mother, Applicant pays between \$300 and \$500 in child support each month. (Gx. 1; Tr. 46 - 47)

Applicant was forward deployed throughout most of his time in the Marines. He spent his first two years at an overseas Marine Corps base, but was deployed from there on actual missions or for training. In 2008, as Applicant was preparing to leave for an extended deployment, he tried to suspend the cell phone service that is the subject of SOR 1.g. He avers the carrier did not suspend his service and he incorrectly became indebted for unpaid bills. In 2012, the same circumstance occurred with the cell phone carrier identified in SOR 1.c. Applicant denies that he is responsible for either debt, but he did not present any documents to support his claimed disputes. (Answer; Tr. 25 - 27, 30, 51 - 53)

During Applicant's last year on active duty, he injured his back. The Department of Veterans Affairs (VA) assigned him a 40 percent disability in May 2014. He is now awaiting a decision on his request for an increase to his disability rating that could increase his monthly benefit payments as well as net him over \$24,000 in retroactive benefit payments. He intends to use that money to repay the debts at SOR 1.b, 1.d, 1.e, 1.f, and 1.g. Applicant is optimistic about his chances of receiving the increased benefits and back pay, but as of the hearing he had not received a decision from the VA. (Answer; Ax. A; Tr. 18 - 20, 25 - 27)

³ At Department Counsel's request, I have included, as Hearing Exhibit (Hx.) 1, a copy of the May 3, 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.

In 2009, Applicant used his VA eligibility to obtain a guaranteed mortgage to purchase a house for \$145,000. He planned to have a roommate to help him pay the mortgage. However, his roommate left in early 2011 and Applicant was unable to replace him. Applicant last made his mortgage payment on time in February 2011, yet he remained in the house until October 2015, when he and his fiancée started living together at her residence. The mortgage was foreclosed at that time, and the property was still pending resale as of the hearing. Applicant did not present any information about what, if anything, he did to resolve the mortgage after stopping payments in 2011. The debt at SOR 1.a arose from these circumstances, and Applicant believes he will actually owe more than the amount alleged once the home is resold. The debt at SOR 1.b is for satellite television service at his house that he stopped paying in 2014. (Answer; Gx. 1 - 3; Tr. 23 - 24, 36 - 43, 54 - 56)

All of the delinquent debts alleged in the SOR arose in 2014 or earlier. In his July 2014 EQIP, Applicant disclosed all but two of the debts alleged. He was interviewed about his debts by a Government investigator in February 2015. In his EQIP, he stated his intent to seek financial counseling to help resolve his financial problems. In his interview, he repeated his intent to get help, and he stated his intention to resolve his past-due debts. As of the hearing, Applicant and his fiancée had met once with a financial counselor in May 2016. Applicant has not yet established a plan for addressing his debts. All of the debts alleged in the SOR are still unresolved. (Gx. 1; Tr. 49 - 50)

Applicant is meeting all of his current monthly expenses and appears to be living within his means. He files his income tax returns as required and usually receives a refund. His most recent refund was used primarily for child support. Applicant testified he has little money left over each month after paying all of his regular expenses. (Tr. 44 - 47, 56 - 59)

Policies

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

⁴ See Directive. 6.3.

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. 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.⁶ 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.⁷

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*); and 19(c) (*a history of not meeting financial obligations*).

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

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

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.

Available information does not support application of any of these mitigating conditions. Applicant has not paid or resolved any of the debts alleged in the SOR. Although SOR 1.c and 1.g may have arisen from a disagreement with two cell phone companies, Applicant has not documented these claimed disputes, and he has not otherwise acted to resolve either debt in more than four years. The largest debt, SOR 1.a, arose entirely through Applicant's poor financial judgment. He has not taken any tangible action to address his delinquent, VA-guaranteed mortgage in the five years since he stopped making required payments.

As to counseling, it appears he and his fiancée started talking two months before his hearing with someone who may assist them with their personal finances. However, Applicant did not present information about how he will better manage his finances in the future. Also, aside from his intent to use money from the VA which he has not yet received to pay his past-due debts, Applicant did not show that he otherwise addressed his debts or how he plans to resolve his debts should he not receive retroactive benefits. On balance, I conclude Applicant did not mitigate the security concerns raised by the Government's information about his finances.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is an honorably-discharged Marine who has held a security clearance without incident for over ten years. While this is significant, without more information about his efforts to resolve his financial problems, 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.h:	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