



**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. 15-05157

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his past-due or delinquent debts. His request for eligibility for access to classified information is denied.

Statement of the Case

On October 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. As part of his background investigation, a government investigator interviewed Applicant on March 19, 2015. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

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

On February 8, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² On February 23, 2016, Applicant responded to the SOR and requested a decision without a hearing.

On April 27, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on May 18, 2016, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed after Applicant did not submit additional information before the June 17, 2016 deadline. The case was assigned to me on June 2, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$30,855 for two delinquent credit card accounts (SOR 1.a and 1.b). Applicant admitted, with explanations, both allegations. (FORM 1). Applicant disclosed his financial problems in his e-QIP, and he discussed his debts during his interview with a Government investigator. Credit reports obtained by the Government during his background investigation also document both debts. In addition to the facts thus established, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor, where he has worked since January 2010. He and his wife have been married since January 1999. They have a five-year-old child. (FORM, Item 2)

Applicant is a skilled tradesman who opened his own business in March 2006. That business failed in 2009 with the decline in the national economy. When his business failed, Applicant was unable to stay current on the accounts listed in the SOR. They became delinquent in the first half of 2013, and they remain unpaid. Applicant claims he has tried to negotiate with his creditors and that he has resolved other delinquent debts left from his business failure. He did not provide any information to support his claims or to show actions taken to resolve his financial problems. Applicant has worked for his current employer for the past seven years, but he also did not provide any information about his current finances. (FORM, Items 1 – 5)

Policies

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

² The SOR was issued under the adjudicative guidelines implemented by the DOD on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the AG, to be effective for all adjudications on or after June 8, 2017. In this decision, I have applied the new AG.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included five exhibits (Items 1 - 5) proffered in support of the Government's case.

⁴ Directive, 6.3.

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 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. The only purpose of a security clearance decision is 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. 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.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

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.⁸ 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.⁹

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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Financial Considerations

The Government met its burden of production in support of the allegations in the SOR. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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 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, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). Because of the circumstances of Applicant's business failure in 2009, I also considered the following mitigating conditions under AG ¶ 20:

(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; and

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

While Applicant's business failure was unusual or beyond his control, Applicant did not establish he acted responsibly under the circumstances. As of the close of the record, his debts were more than three years old. The record contains no information showing action to resolve his debts or reflective of his current finances. Available information requires a conclusion that the security concerns under this guideline remain.

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). This record raises significant doubts about Applicant's suitability for access to classified information. Applicant is not required to be debt free; however, the Government is entitled to assurances that unpaid debts are not the result of poor judgment or that an individual is not at risk of engaging in misconduct to resolve financial delinquencies. Applicant has not produced any information that addresses the doubts about his suitability for access to classified information raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, those 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: AGAINST APPLICANT

Subparagraphs 1.a - 1.b: Against Applicant

Conclusion

In light of all available information, 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