



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-05628

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/11/2017

Decision

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns raised by Applicant's financial problems. His request to be eligible for access to classified information is granted.

Statement of the Case

On February 12, 2015, 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. During his background investigation, Applicant was interviewed on April 8, 2015, by a government investigator. 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

On February 22, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² Applicant timely responded to the SOR and requested a decision without a hearing. On May 20, 2016, Department Counsel for the Defense Office of Hearings and Appeals

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

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

(DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on June 6, 2016, and was advised he had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM. The record closed after Applicant did not object to the FORM documents or submit additional information by the July 6, 2016 deadline. The case was assigned to me on April 7, 2017.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He has held his current job since September 2006. Applicant earned an associate's degree in 2000. He served on active duty in the United States Army between 1996 and 1999, and in the Army National Guard until June 2005, when he was honorably discharged after completing a year-long deployment to Iraq. Applicant first received a security clearance in connection with his military service. There is no indication he has engaged in any misconduct or security violations during or after his military service. (FORM, Item 2)

Under Guideline F, the Government alleged that Applicant owes \$11,731 for the remainder due after resale of a repossessed car (SOR 1.a); and that he owes \$1,818 for a state tax debt (SOR 1.b). (FORM, Item 1) In response, Applicant admitted SOR 1.a and denied SOR 1.b. As to SOR 1.b, he provided information showing that the tax debt was paid in February 2016. SOR 1.b is resolved for Applicant.

Starting in about 2007, Applicant experienced financial problems when his income could not keep up with the cost of living where he resided. In 2006, he had purchased a new car and was able to make the required payments until late 2007, when he was late on two payments and missed one payment. The car was repossessed in late 2007 or early 2008 and later resold for \$6,000. The remaining balance was about \$18,000, and the remainder (\$11,731 as alleged at SOR 1.a) was referred to a collection agency in 2009. Applicant believes he should not have to pay the full remainder because the relatively new car should have been sold for more than \$6,000. This debt has not been resolved. (FORM, Item 3)

In July 2009, Applicant moved in with his brother to save money. With no rent to pay he was able to resolve other debts not at issue here, and he has not incurred any additional unpaid debts. A review of the two credit reports presented by the Government shows that, with the exception of SOR 1.a, there are no delinquent or past-due debts attributable to Applicant. The more recent credit report shows a zero past-due amount for SOR 1.a. (FORM, Items 3 - 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 and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) 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

³ See Directive, Enclosure 3, Section E3.1.7. In the FORM, Department Counsel relies on six enclosed exhibits (Items 1 - 6).

⁴ Directive. 6.3.

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 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

Analysis

Financial Considerations

The tax debt at SOR 1.b was never reported in either of the Government's credit reports or discussed during his interview. Available information shows a tax warrant was filed in October 2015. Applicant satisfied the debt four months later. SOR 1.b does not raise a security concern as it was not a delinquent debt and Applicant promptly addressed it.

Available information, including Applicant's admission, supports the SOR 1.a allegation. It arose in 2007, when Applicant's car was repossessed and the remainder after resale was referred for collection in 2009. It remains unresolved and is sufficient to raise the security concern expressed at AG ¶ 18:

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).

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, Applicant's conduct requires application of the disqualifying condition at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*). By contrast, the record evidence as a whole supports application of the mitigating conditions at 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 20(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*).

Applicant's car repossession debt is nine years old and no longer being reported with a past-due balance. There are no other adverse accounts reflected in Applicant's credit history. He experienced a brief period of financial difficulty due to insufficient income. This record does not reflect any irresponsible financial decision making. To reduce expenses, Applicant moved in with his brother in 2009 and appears to again be on sound financial ground. On balance, I conclude the security concerns raised by Applicant's single outstanding debt are mitigated.

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(a). Applicant is an honorably-discharged Army veteran, who has been steadily employed since leaving active duty, albeit, with income that hindered his financial health ten years ago. Applicant has only one unresolved debt, but he has not incurred any new delinquencies since 2009. A 2015 tax debt was promptly resolved and was not reported as delinquent. Available information shows he is unlikely to experience a recurrence of his past financial problems. A fair and commonsense assessment of this record shows that the security concerns expressed through the SOR 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.b:	For Applicant

Conclusion

In light of all available information, 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