



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-06430

Appearances

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

02/03/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his failure to file his federal and state income tax returns, and by his other financial problems. His request for a security clearance is denied.

Statement of the Case

On January 16, 2015, 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 continue to hold a security clearance.¹

On February 19, 2016, DOD issued an 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

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).

hearing. The case was assigned to me on June 6, 2016, and I convened a hearing on August 10, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 3.³ Applicant testified and presented Applicant's Exhibits (Ax.) A - D. All exhibits were admitted without objection. A transcript of the hearing (Tr.) was received on August 19, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant did not file his federal income tax returns (SOR 1.a) or his state income tax returns (SOR 1.b) as required for the 2012 and 2013 tax years. It was also alleged that Applicant owed \$69,348 for past-due or delinquent payments on a mortgage with a balance of \$338,825 (SOR 1.c). Further, the Government alleged that Applicant owed another \$8,603 for six other delinquent or past-due debts (SOR 1.d - 1.i). In response, Applicant denied SOR 1.d, and 1.g - 1.i. He admitted the remaining allegations. He also provided explanatory remarks with each response. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 60 years old. He works for a defense contractor in a position that requires eligibility for access to classified information. Applicant has worked for his current employer since August 2013. After serving on active duty in the U.S. Navy until 1981, he obtained his college degree in financial management while serving in the Navy Reserve. He then embarked on a career in the defense industry. He was first granted a security clearance in 1976. (Gx. 1; Tr. 78 - 81)

Applicant and his wife have been married since May 2014. He was married twice before. Applicant's first wife died in March 2003, after 14 years of marriage. They had three children, now grown, together. Applicant raised them largely by himself. A second marriage in 2004 ended in divorce three years later. (Gx. 1)

Applicant was laid off from a previous contractor position in January 2009. He remained unemployed until being hired for his current job 18 months later. In 2008, he had refinanced the mortgage on a home and land he had first purchased in 2002. His oldest child was in college and he was supporting all three of his children alone. After becoming unemployed, Applicant had trouble paying his mortgage and meeting other financial obligations. He was unable to sell his property to cover his mortgage because of the recession and associated decline in the housing market. In his EQIP, he disclosed that he had resolved a significant debt for unpaid mortgage through a short-sale in 2011. That debt was alleged at SOR 1.c; however, Applicant established at hearing that he satisfied his mortgage obligation through a short-sale completed in March 2011. Applicant does not know why the debt is listed as a foreclosure. (Answer; Gx. 1 - 3; Ax. A; Ax. B; Tr. 36 - 37, 44, 56)

Applicant also disclosed in his EQIP that he had not filed his federal and state income taxes, as required, for the 2012 and 2013 tax years. In May 2015, he was interviewed during his background investigation by a government investigator. Applicant discussed his financial difficulties and his failure to file his tax returns. Applicant had struggled to pay his taxes for 2011. After filing for extensions for the 2012 and 2013 returns, Applicant decided not to file his returns for each year because he felt he would not be able to pay those tax bills. In response to the SOR and at his hearing, Applicant

³ Department Counsel's list of exhibits is included as Hearing Exhibit (Hx.) 1.

established that he filed his federal returns for 2012 and 2013 in March 2016, around the time he responded to the SOR. However, it was also determined at the hearing that Applicant did not submit his 2014 federal returns until July 2016. He has not yet filed his federal return for 2015, and he has not filed his state income tax returns for the 2012 - 2015 tax years. As of May 2016, the IRS advised Applicant that he owed \$12,208 for the 2012 tax year, and \$7,665 for the 2013 tax year. Applicant started working with a tax resolution law firm a few weeks before his hearing, but did not submit any information showing that he has made any payments on his tax debts. (Answer; Gx. 1; Gx. 2; Ax. A; Tr. 15, 37 - 42, 64 - 73, 84 - 87)

As a result of his 18-month unemployment in 2009 and 2010, Applicant also incurred high balances on credit cards he used to help make ends meet. He averred that he has contacted and has been working with some of those creditors but presented no information to document those efforts. He has not made any progress on other credit card debts, alleged in SOR 1.d - 1.f. He has been unable to obtain any information about the debt at SOR 1.d, and he will no longer negotiate with the collection agencies holding the SOR 1.e and 1.f debts because he feels they are being unreasonable in their negotiating positions. (Answer; Gx. 1 - 3; Tr. 15, 47 - 50, 59 - 61)

Applicant also incurred three past-due debts for medical services. They are alleged at SOR 1.g - 1.i. On August 8, 2016, he paid the \$25 debt at SOR 1.i. He disputes the \$842 debt at SOR 1.g, claiming that he was billed twice for a single procedure; however, he did not support his claim with any corroborating documents. Applicant has no information about the \$250 debt at SOR 1.h. (Answer; Gx. 1 - 3; Ax. C; Tr. 62 - 63)

Applicant feels his current finances are stable, but acknowledged that he is still repaying a local bank and some associates of his for loans on which he relied when he was out of work. Applicant's income fell by about \$20,000 when he was hired by his current employer. In May 2015, his current wife became disabled and unable to work, thus reducing their household monthly income by about \$2,000. However, Applicant's annual salary has now increased to about \$90,000. (Answer; Tr. 52 - 53, 65, 85)

As of August 2016, Applicant still owed \$24,000 on loans totaling \$137,000 borrowed since 2004. The vice-president of that bank holds Applicant in high regard for his strength of character and financial responsibility. Other references speak positively of Applicant for his loyalty, work ethic, and dependability. He also is active in his church and has a reputation for honesty and discretion in his community. (Ax. D)

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

⁴ See Directive. 6.3.

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. 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 condition 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*). As alleged in SOR 1.c - 1.i, Applicant incurred significant past-due or delinquent debt, in large part, because of an

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).

18-month period of unemployment. As alleged in SOR 1.a and 1.b, he also did not file his federal or state income tax returns as required for tax years 2012 and 2013.

I have considered the following AG ¶ 20 mitigating conditions as potentially applicable to these facts and circumstances:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Of these mitigating conditions, only AG ¶¶ 20(b) and 20(d) are supported by the record. AG ¶ 20(b) is only partially applicable. Applicant's financial problems arose from a lengthy period of unemployment and a failed housing market. Although he was able to satisfy his mortgage obligation in 2011, he has not provided information that reflects a responsible effort to resolve any of the debts alleged at SOR 1.d - 1.i. His claimed disputes of SOR 1.d and 1.g are not substantiated. AG ¶ 20(d) applies only to Applicant's resolution of the mortgage-related debt at SOR 1.c in 2011. The only other debt he has resolved is the \$25 SOR 1.i debt, which he paid two days before his hearing. The credit card and medical debts alleged at SOR 1.d - 1.h have not been paid or otherwise resolved because of undocumented disputes with creditors or because Applicant has chosen to not negotiate with some creditors.

As to SOR 1.a and 1.b, none of the AG ¶ 20 mitigating conditions apply. Applicant presented information showing that he filed his federal returns for 2012 and 2013, but did so only around the time he responded to the SOR. He has not yet filed any state tax returns since the 2011 tax year, and the information he presented shows he submitted his federal return for the 2014 tax year in July 2016, and he has not yet filed his federal return for the 2015 tax year. Further, Applicant owes nearly \$20,000 in unpaid taxes for 2012 and 2013. Applicant sought the assistance of a tax resolution law firm, but did so just before his hearing and has not yet established a plan for resolving his unfiled returns or satisfying his tax debts.

In summary, despite being gainfully employed since August 2013, Applicant still has not satisfactorily explained why he has not paid several debts that appear to be within his ability to do so. Also, he is in debt to the federal government for unpaid taxes and he owes his local bank another \$24,000. These facts undermine confidence that Applicant is likely to resolve his financial difficulties in the foreseeable future. On balance, Applicant has failed to mitigate the security concerns raised by the Government's information.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a Navy veteran and long-time defense contractor employee. He has held a security clearance for most of his adult life, and he is held in high regard by his friends and associates. Nonetheless, this information is not sufficient to overcome the recent security concerns raised by his tax status and by his failure to act on his remaining debts. Available information leaves me with doubts about his current suitability for access to classified information. Because protection of the national interest is the principal focus in these adjudications, any unresolved 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
Subparagraph 1.c and 1.i:	For Applicant
Subparagraphs 1.a, 1.b, 1.d - 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