



**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. 15-06730

Appearances

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

07/12/2017

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 November 6, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as required for his job with a defense contractor. After reviewing 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 access to classified information.¹

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

On May 27, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² On June 24, 2016, Applicant responded to the SOR and requested a decision without a hearing.

On August 23, 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 September 8, 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 October 8, 2016 deadline. I received the case for decision on June 5, 2017.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor, where he has worked since March 2013. He and his wife have been married since August 1989 and have two adult children. (FORM, Item 3)

Under Guideline F, the Government alleged that Applicant owes \$11,032 for eight delinquent or past-due debts (FORM, Item 1). Applicant admitted all of the allegations. (FORM, Item 2). Applicant did not disclose any delinquent debts in his e-QIP; however, credit reports obtained during his background investigation documented the debts alleged in the SOR. The debts documented in this record have been delinquent between three and seven years. (FORM, Items 4 and 5).

Applicant has not presented any information that shows he has paid or otherwise resolved any of the debts alleged. Nor has he presented any information regarding the reasons for his indebtedness or the current state of his finances.

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(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

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.

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

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

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).

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*). Applicant has not produced information that supports any of the AG ¶ 20 mitigating conditions. The security concerns under this guideline remain.

In addition to my application of the 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). 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 may raise the risk of misconduct. Without such assurances, doubts remain about Applicant's suitability for access to classified information. Because protection of the interests of national security 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.h: Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge