



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-07050

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2017

Decision

MALONE, Matthew E., Administrative Judge:

Available information is not sufficient to mitigate the security concerns about Applicant's unresolved delinquent debts. Applicant's request for a security clearance is denied.

Statement of the Case

On October 18, 2012, 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 March 9, 2016, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for financial

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).

considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

The case was assigned to me on September 26, 2016, and I convened a hearing in this matter on November 15, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4. Applicant testified in his own behalf and submitted Applicant's Exhibits (Ax.) A - C. All exhibits were admitted without objection. One witness also testified for Applicant. A transcript of the hearing (Tr.) was received on November 22, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$76,161 for two delinquent or past-due debts (SOR 1.a - 1.b). Applicant admitted, with explanations and supporting documents, both SOR allegations. (Answer) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 52 years old. Since at least July 2001, he has worked in information technology (IT) positions with several companies and has held a security clearance since about July 2002. In September 2011, Applicant was terminated from his job for alleged timecard violations, something he has denied. Applicant was unemployed until the end of 2011, but he has been steadily employed since January 2012. Applicant's income has increased by about \$10,000 since he started his current job as a software developer in October 2012. (Gx. 1; Tr. 56 - 59)

In 2001, Applicant bought a house using a mortgage to finance the \$135,000 purchase price. In 2008, he opened a home equity line of credit (HELOC) to borrow against the value of his house in order to resolve between \$20,000 and \$25,000 in retail debt he owed at the time. He also needed money to help his mother pay for medical expenses. At the time he was fired in September 2011, the balance on this account was about \$38,000. When he became unemployed, he stopped making payments. Although he claims he contacted the creditor for his HELOC after he went back to work to discuss the past-due status of his account, he did not resume making regular payments after he went back to work in 2012. In July 2013, the HELOC lender obtained a judgment against Applicant for \$51,446.81. That debt is alleged at SOR 1.a. (Answer; Gx. 2; Gx. 4; Ax. B; Tr. 35 - 36, 52)

In June 2009, Applicant opened a credit card account with the same lender from whom he obtained the HELOC. That account also became past-due when Applicant lost his job in 2011. It became delinquent even after Applicant started working in 2012. In April 2013, the creditor obtained a judgment against Applicant for \$19,101. (Answer; Gx. 2; Gx. 4; Ax. B)

The same law firm represents the creditor identified in SOR 1.a and 1.b. In accordance with an agreement between Applicant and that firm, he started making monthly payments on the SOR 1.b judgment in May 2013.³ There are several gaps in his record of payments; however, Applicant has been gainfully employed the entire time and did not provide a plausible explanation for why he has missed payments under the agreement. Applicant told a Government investigator in December 2012 that he started making \$1,000 payments on this account in February 2012. He also repeated this claim

³ It appears the agreement calls for Applicant to start paying the SOR 1.a debt after paying the SOR 1.b debt.

at hearing; however, Applicant did not provide any information that documents such payments. (Answer; Ax. A; Ax. B)

Applicant acknowledged that before he was fired in 2011, he did not have much margin for error due to the way he managed his finances. A review of all of the information probative of Applicant's credit history and management of his personal finances shows that he also defaulted on a third account with the creditor listed in the SOR, and that he defaulted on more than \$50,000 in student loans before enrolling in a student loan rehabilitation program. (Gx. 1 - 3; Ax. B; Tr. 43 - 48, 59 - 60)

Applicant has not received any financial counseling or other professional assistance with his finances. He claims his current finances are sound, but he did not provide any detailed information about his current income and expenses. There is no indication that he has not complied with his income tax obligations. (Tr. 39 - 42)

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 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

⁴ See Directive. 6.3.

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

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

The Government presented sufficient information to support the SOR allegations under this guideline. The facts thus 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, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG 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 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.

Applicant claims his debts are the direct result of the loss of employment in September 2001. He disputes the reasons for that termination. AG ¶ 20(a) applies to the extent that the event was several years ago and appears to be isolated. Applicant

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

has otherwise been gainfully employed with a steady income since 2001. As to AG ¶ 20(b), Applicant's loss of employment for two months over five years ago does not support application of this mitigating condition. Even if unexpected or beyond his control, Applicant had the time and resources necessary to pay or otherwise resolve his debts. By his own admission, Applicant was already in financial peril when he lost his job. Indeed, the HELOC had been obtained to pay off significant retail credit debt. Applicant has not sought any financial counseling and he has only made the payments shown in his exhibits because there are civil judgments against him. As to his payment history since 2013, Applicant did not adequately explain why he has missed several payments over the past three years despite having steady income. All of the foregoing precludes application of any of the AG ¶ 20 mitigating conditions. The security concerns about Applicant's finances remaining unresolved.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant's failure to timely address his financial obligations despite having the means to do so underscores the doubts about his suitability for access to classified information that have been 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 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