



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-07050
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

06/27/2017

Remand Decision

MALONE, Matthew E., Administrative Judge:

Available information, including information considered on remand, 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 guideline for financial 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. The record closed on November 15, 2016. A transcript of the hearing (Tr.) was received on November 22, 2016.

On January 31, 2017, Applicant submitted additional information and asked that I consider it in making my decision. In response to my inquiry, Department Counsel waived objection to Applicant's information and I agreed to consider Applicant's post-hearing submissions.

On March 17, 2017, I issued a decision in which I concluded that it was not clearly consistent with the national interest for Applicant to have access to classified information. Through an inadvertent oversight, I did not review and consider Applicant's post-hearing submissions in reaching my initial decision. Applicant subsequently retained counsel and appealed, correctly claiming I had not identified Applicant's post-hearing submissions in my decision and that I had not provided them in the case file along with the information presented at hearing. Applicant's post-hearing submissions are identified and marked as follows:

- Ax. D: a single-page statement by Applicant, dated January 31, 2017, in which he provides new testimony about one of the debts at issue in the SOR and about his loss of employment in 2011;
- Ax. E: an excerpt from the summary of his December 6, 2012 subject interview;
- Ax. F: an April 7, 2005 letter of appreciation from a general officer to Applicant regarding Applicant's performance in support of the general's organization;
- Ax. G: a December 12, 2002 letter of commendation to Applicant from a senior military officer; and
- Ax. H: an undated Employee of the Year Award for Applicant.

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

Findings of Fact

My findings of fact in the original decision are incorporated herein by reference and remain unchanged by the information in Ax. D – H. The only proffer of note is Applicant's claim in Ax. D regarding the information about his 2011 loss of employment highlighted in Ax. E. I do not accept Appellant's characterization that Ax. E is conclusive of that issue because the "matter was later investigated by the Office of Personnel Management (OPM)." The highlighted text is simply the investigator's recordation of what Appellant had to say about the matter during his interview, not the result of an OPM investigation into his job termination.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,² 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(d) 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 interest³ 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.

² See Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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.⁴ 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.⁵

Analysis

The adjudicative guidelines (AG) originally applied in this case were implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the AG were amended and reissued to be effective for all decisions on or after June 8, 2017. On remand, I have considered and applied the new AG regarding. Nothing therein warrants a different decision.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's new information consisting of commendatory letters from more than ten years ago is not sufficient to overcome the adverse financial information in this case. On remand, I still conclude that 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 and 1.b:	Against Applicant

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; AG ¶ 2(b).

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