



**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. 15-08639

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by the Government's information about his financial problems. Although Applicant's response to the SOR was plausible, he did not provide any documentation to corroborate his claims of payment or other resolution of his debts. His request for a security clearance is denied.

Statement of the Case

On February 12, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) 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 interests of national security for Applicant to have a security clearance.¹

On July 6, 2016, DOD issued a Statement of Reasons (SOR) alleging facts raising security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. On February 1, 2017, I received this case, and I convened the requested hearing on March 8, 2017.

The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 – 3. I admitted Gx. 1 and 2, but *sua sponte* excluded Gx. 3.³ Applicant testified in his own behalf. I left the record open for three weeks after the hearing to afford Applicant an opportunity to submit documents in support of his testimony. I received a transcript of the hearing (Tr.) on March 20, 2017. The record closed on March 31, 2017, without any post-hearing submissions by either party.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$190,920 for 16 delinquent or past-due debts (SOR 1.a - 1.p). The mortgage debts at SOR 1.b and SOR 1.i total \$163,282 and constitute 85 percent of the total debt at issue. In response, Applicant denied SOR 1.a, 1.c, 1.g, 1.h, 1.i, 1.m, and 1.o. (Answer) As to these controverted issues of fact,⁴ the information in Gx. 2 supports the allegations Applicant denied. He admitted the remaining allegations and provided explanatory remarks with all of his responses. In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 40 years old. He and his wife have been married since September 2013. A previous marriage ended in December 2002 after three years. Applicant has two children, ages 8 and 18, and one stepchild, age 13. (Gx. 1)

Applicant served in the United States Navy from June 1995 until October 2012. He received an honorable discharge as a petty officer first class. Applicant held a security clearance for his entire Navy career. In his e-QIP, Applicant made the general disclosure that he had financial problems because of unexpectedly having to leave the

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

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

³ Tr. 18 - 19.

⁴ See Directive, E3.1.14.

military. A credit report obtained during the ensuing background investigation revealed the debts alleged in the SOR. (Answer; Gx. 1 and 2)

The debts at SOR 1.b and 1.i are for a first mortgage and a home equity line of credit (HELOC), respectively. They pertain to a house Applicant bought in State A, while stationed there in December 2002. When he transferred to State B in 2008, he rented the house to a fellow sailor; however, the renter deployed without giving Applicant any advance notice. Applicant was unable to find another renter, and he did not have enough income to both meet his mortgage and HELOC in State A, and support himself in State B. The mortgage eventually went into foreclosure in 2011. As to the first mortgage, Applicant averred he has no remaining obligation. As to the HELOC, Applicant has been in contact with that creditor. He understands he still owes that debt, but he has not yet arranged to resolve it. (Answer; Gx. 2; Tr. 41 - 43, 54 - 56, 72 - 73)

The Navy involuntarily separated Applicant after 17 years of service because he did not meet the Navy's weight standards. He had hoped to retire from active duty after 20 years of service. When he left the military, Applicant lived in State B, but accepted a position at a defense contractor doing work for which he was trained in the Navy. In anticipation of starting the job, he moved back to State A and rented a house there. Unfortunately, the job did not materialize because of unexpected DOD budget cuts. As a result, Applicant was unemployed for about six months, when he found work at a Walmart. Applicant worked there until November 2014, when he obtained his current job as an engineering technician at a defense contractor in State B. Applicant's work includes extensive travel and requires he have a security clearance. (Answer; Gx. 1; Tr. 12, 20 - 21, 26 - 30)

When Applicant first started working for his current employer, his salary was barely enough to cover existing expenses. The debts he accumulated while unemployed and while working at Walmart went unpaid between his October 2012 discharge and October 2014. Since then, Applicant's monthly pay has increased from about \$1,500 to about \$3,600. He also is awaiting approval for partial disability payments from the Department of Veterans Affairs (VA) estimated at about \$800 a month. Applicant estimates he and his wife have about \$500 remaining after expenses with which to pay their past-due debts. (Answer; Tr. 22, 30 - 35)

As to the remaining debts listed in the SOR, Applicant claimed that he has paid some of them, and that he is making modest payments on others. Because he travels frequently for his job, his wife is generally in charge of their finances. This includes a household budget, filing income taxes, and paying bills. According to Applicant, she has records of the payments they have made. Applicant also claimed that he disputes other debts, and that he consulted with a financial counselor in 2016 who advised him to seek bankruptcy protection. He did not present any documents at the hearing. I held the record open for just over three weeks after the hearing based on his representation that he could provide documentation of his disputes and payments. He did not provide any documents in support of his case. (Answer; Tr. 37 - 41, 43 - 67, 71, 74 - 79)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ 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 interest⁶ 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.⁷ 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.⁸

⁵ See Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

Analysis

Financial Considerations

The Government's information reasonably raised a security concern about Applicant's finances. That concern is stated 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 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, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). I 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant's response to the SOR and the claims made at hearing touch on each of these mitigating conditions. Applicant's debts resulted, at least in part, from the unexpected end of his military career. He claims to have paid, or that he is trying to resolve, his debts. He also claimed that he has more income now, and that he and his wife have paid or are resolving some of their debts. He also claims he has consulted with a financial professional about his debts.

By contrast, the Government established a case for disqualification and the burden shifted to Applicant to provide sufficient information to support his claims and establish mitigation. He did not establish that he acted responsibly in the face of his financial problems or that his finances are actually under control. Based on the available information, I cannot conclude that any of the mitigating conditions under this guideline are applicable.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant served for 17 years in the Navy. He presents as a sincere and responsible family man whose financial problems were not due to misconduct or irresponsible financial management. Nonetheless, without sufficient information that it was his responsibility to provide, the doubts raised by the Government's information about his finances remain. Because protection of the interests of national security is the principal focus of these adjudications, any remaining 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.p:	Against Applicant

Conclusion

In light of all of the foregoing, 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