



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-07228

Appearances

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

02/13/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred delinquent or past-due debts through circumstances that are unlikely to recur. He acted responsibly to pay or otherwise resolve his debts, and his current finances are sound. The security concerns about Applicant's finances are mitigated and his request for a security clearance is granted.

Statement of the Case

On December 22, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his employment with a government 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 30, 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. I received the case on September 26, 2016, and convened the requested hearing on November 16, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4.³ Applicant and one witness testified. Applicant also presented Applicant's Exhibits (Ax.) A - E. A transcript of the hearing (Tr.) was received on November 23, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$23,100 for 11 delinquent or past-due debts (SOR 1.a - 1.k). In response, Applicant denied, with explanations, the debts alleged at SOR 1.l and 1.k. He admitted, with explanation, the remaining SOR allegations (Answer).

When Applicant submitted his EQIP, he disclosed the debts alleged at SOR 1.a, 1.b, 1.d - 1.g, 1.j and 1.k. Credit reports obtained during the ensuing background investigation document these and the remaining debts alleged. Applicant also discussed these debts and his financial problems during his subject interview with a Government investigator in April 2015. In addition to the facts thus established, I make the following findings of fact.

Applicant is 42 years old and works for a construction company doing business with the federal government through contracts that require Applicant be eligible for access to classified information. He has worked for that company since December 2014. Applicant's supervisor testified that Applicant is a superior employee who, while he held an interim clearance, demonstrated he will handle classified information correctly and reliably. The witness was familiar with the issues that concern the Government in this case. He nonetheless recommended Applicant for a clearance based on his observation of Applicant's work ethic, character, and expertise. Numerous other personal and professional references voiced the same sentiments in their written letters of recommendation and support. (Gx. 1; Gx. 2; Ax. D; Tr. 26 - 36)

Applicant and his wife have been married since December 2014. Applicant was previously married from May 1996 until August 2008; however, he and his ex-wife later attempted to reconcile and lived together from about December 2009 until sometime in 2012. Applicant has had custody of their two children, now ages 20 and 16, since 2009, but never sought or received financial help from his ex-wife. Their marriage failed because Applicant's ex-wife became addicted to pain medications. Her drug-related behavior often manifested itself through mismanagement of their finances. Money intended for payment of bills was often used for drugs or other activities that undermined Applicant's family's financial health. These circumstances were further exacerbated by the fact that Applicant was often away for work and unaware the bills were not being paid. Finally, as part of the national economic recession, Applicant experienced a period of underemployment between late 2009 and late 2011. (Gx. 1; Tr. 49 - 52)

In response to the SOR, Applicant presented information that established he had paid or otherwise resolved the debts at SOR 1.b - 1.f, 1.h, and 1.j. At hearing, he updated his Answer and established that all of the debts alleged have been paid or otherwise resolved, even though some of the debts were attributable to his ex-wife.

³ At Department Counsel's request, I have included, as Hearing Exhibit (Hx.) 1, a copy of the June 9, 2016 letter that forwarded Gx. 1 - 4 to Applicant, in accordance with Directive Section E3.1.13.

Applicant's information shows that his efforts to repay his debts, in several instances, began well before the SOR was issued. He has taken responsibility for the debts from his first marriage and acknowledged that he should have been better at monitoring their finances even though he was away for long periods of time. (Answer; Ax. A; Ax. E; Tr. 37 - 40)

Applicant also presented information that established his current finances are sound. He has a significant positive cash flow each month after meeting all of his expenses. He has incurred no new unpaid or past-due debts. (Gx. 2; Ax. A; Ax. E)

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 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

⁴ See Directive, 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

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.

Applicant incurred significant unpaid debt through a combination of his ex-wife's drug-related financial malfeasance and his own lack of attention to their finances. The debts at issue went unaddressed for about three years. Available information 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 started paying his past-due debts well before the SOR was issued and he has fully resolved all of the debts alleged in the SOR. More important, his personal and professional circumstances have improved and he is unlikely to experience such financial problems in the future. His prompt and thorough resolution of his financial problems reflects well on his judgment and reliability. His finances are healthy and he is well-positioned to handle any unplanned financial events in the future. I conclude from all of the foregoing that the security concerns about Applicant's finances have been mitigated.

⁷ See *Egan*; AG ¶ 2(b).

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has an excellent reputation among his friends and associates for trustworthiness and good judgment. He has demonstrated that he can be entrusted with sensitive information. A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns about Applicant's finances have been mitigated.

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: FOR APPLICANT

Subparagraphs 1.a - 1.k: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge