



**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. 15-07427

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not submit any information to overcome the security concerns raised by the Government's adverse information about his financial problems. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On September 3, 2009, 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 completed background investigation, Department of Defense (DOD) adjudicators determined that it was clearly consistent with the interests of national security for Applicant to have access to classified information. On April 8, 2015, Applicant submitted an e-QIP to renew his security clearance eligibility. After reviewing another background investigation, DOD

adjudicators could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.¹

On July 8, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² At the time the SOR was written, the DOD CAF applied the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On December 10, 2016, the Director of National Intelligence (DNI) issued a new set of AGs, effective for all security clearance adjudications conducted on or after June 8, 2017. I have based my recommended decision in this case on the June 8, 2017 AGs.³

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On August 10, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on September 13, 2016, and had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.⁵ Applicant did not provide any additional information in response to the FORM. I received the case on July 3, 2017.

Findings of Fact

The Government alleged in the SOR that Applicant owes \$4,910 for ten delinquent or past-due debts (SOR 1.a – 1.j). The \$2,215 debt at SOR 1.d represents the amount past due on Applicant's mortgage. If that mortgage were now in default, the total debt at issue in this case would reflect the entire \$135,330 loan balance. Applicant admitted all of the SOR allegations without explanation or other additional information. (FORM, Item 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 36-year-old aircraft mechanic employed by a defense contractor since January 2009. In December 2008, he completed technical training in aircraft maintenance. Applicant has been steadily employed since July 2004, except for the period April 2007 through October 2007. At that time, he was moving and starting technical school. Applicant and his wife have been married since June 2005. Together they are raising two children, ages 9 and 12.

When Applicant started his current job, he applied for and received eligibility for a security clearance. In his September 2009 e-QIP, he disclosed several past-due or

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

² See Directive, Enclosure 2.

³ My decision in this case would have been the same under either version of the adjudicative guidelines.

⁴ See Directive, Enclosure 3, Section E3.1.7. In the FORM, Department Counsel relies on eight enclosed exhibits (Items 1 - 8).

⁵ See Directive, Enclosure 3, Section E3.1.7.

delinquent debts, and he provided explanations for his financial problems at the time. In his April 2015 e-QIP, submitted for renewal of his clearance, Applicant again disclosed delinquent or past-due debts. In April 2015 and April 2016, the Government obtained credit reports that support the SOR allegations in this case. (FORM, Items 3 – 5)

One of the debts listed in the April 2015 credit report was the past-due mortgage payment alleged in SOR 1.d. In March 2014, Applicant suffered an on-the-job injury and was unable to work for about eight weeks. During that time, he received only about 25 percent of his regular pay. Applicant fell behind in his mortgage payments, but in late 2014, he was able to obtain a mortgage modification to stave off foreclosure proceedings. On March 13, 2015, Applicant's employer notified the DOD CAF through the Joint Personnel Adjudications System (JPAS) that Applicant had reported he again was in arrears on his mortgage. (FORM, Items 5 – 8)

The only explanation for Applicant's financial problems in this record is his statement to a government investigator during a May 6, 2015 subject interview. Applicant cited the temporary loss of income after his March 2014 injury, and his lack of attention to household finances, which his wife had been managing. Applicant claimed he did not know the mortgage and other bills were going unpaid. He also stated his intention to be more involved in their finances thereafter. (FORM, Item 5)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ 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 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 interest⁷ for an applicant to either receive or continue

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

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.¹⁰ 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.¹¹

Analysis

Financial Considerations

The Government's information about Applicant's debts reasonably raised the security concern expressed at AG ¶ 18:

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.

Applicant has been experiencing significant financial problems since at least 2009, when he first received a security clearance. He has not addressed any of the debts alleged in the SOR. This information requires application of the disqualifying condition at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(b) (*unwillingness to satisfy debts*

⁸ Directive, E3.1.14.

⁹ Directive, E3.1.15.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

regardless of the ability to do so); and 19(c) (a history of not meeting financial obligations).

I have also considered whether the record supports application of any of the AG ¶ 20 mitigating conditions. I conclude it does not. Even though Applicant experienced a temporary income reduction in the first half of 2014, he did not establish that he dealt with the adverse financial consequences in a responsible way. Despite obtaining a mortgage modification later that year, he again fell behind in his mortgage a few months later. Applicant did not provide any information in response to the SOR or to the FORM regarding efforts to resolve his debts and improve his financial condition. Applicant's financial problems pre-date his first application for clearance. It was incumbent on Applicant to provide current information regarding his finances in order to mitigate the Government's security concerns.

In addition to my evaluation of the facts and application of the appropriate 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). Doubts about Applicant's suitability remain because of his longstanding financial problems and his lack of action to pay or otherwise resolve his debts. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved against the granting of access to classified information.

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.j: 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 security clearance eligibility is denied.

MATTHEW E. MALONE
Administrative Judge