



**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. 15-07872

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate 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 February 9, 2015, 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 could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.¹

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

On January 22, 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 July 6, 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 August 26, 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 \$80,841 for seven delinquent or past-due debts (SOR 1.a – 1.g). The \$36,135 debt at SOR 1.a 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 \$106,089 loan balance. Applicant denied all of the SOR allegations with explanations. (FORM, Item 3) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 41-year-old aircraft mechanic employed by a defense contractor, first as a temporary employee then as a permanent employee, since July 2010. He previously worked in a similar position between August 2002 and February 2010. At that time, his job relocated to another state, but he could not sell his house or afford to move because he and his ex-wife were in the process of divorcing. Applicant and his wife were married from May 1998 until February 2010. In addition to being unable to sell the marital residence so he could follow his job, he also wanted to remain close to his children, who were four and seventeen at the time. Applicant was unemployed from March 2010 until July 2010. (FORM, Items 3, 4 and 6)

Most of the debts at issue here became delinquent at or near when Applicant was unemployed and divorced. He averred that the mortgage accounts at SOR 1.a and

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 six enclosed exhibits (Items 1 - 6).

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

1.c pertain to his marital residence at the time of his divorce. Those mortgages went into default in 2009. The lender subsequently foreclosed and resold the property at auction. Applicant believes he has no further obligation on these debts, but he did not produce information the lender would provide to Applicant reflecting what it reported to the IRS regarding disposition of the loan. (FORM 3 – 6)

Applicant responded in similar fashion regarding a delinquent car loan debt alleged at SOR 1.d. In December 2010, Applicant voluntarily returned a motor vehicle to the dealer / lender because he could no longer afford the car loan payments. Applicant avers he has heard nothing from the dealer in the six years that have elapsed since he returned the vehicle. Based on this, Applicant believes he no longer owes this debt. Likewise, the creditor holding the credit card debt at SOR 1.b charged off the debt as a business loss. This leads Applicant to believe he no longer owes that debt. (FORM, Items 3 – 6)

Finally, Applicant does not have any information about the SOR 1.e debt. He claimed that he settled the debt at SOR 1.f and that he resolved the debt at SOR 1.g through a 2004 bankruptcy petition. In response to the SOR and the FORM, Applicant did not present any information to support the claims made in his Answer. (FORM, Item 3)

Applicant served in the Army from March 1995 until February 2001. He attributes his financial problems, in part, to poor financial decisions he made after leaving active duty. He also cited the fact that he lost seven months of work in 2003 due to an on-the-job injury. This coincided with his ex-wife's pregnancy with their younger child. Applicant has not received any professional financial assistance or counseling. (FORM, Items 3, 4, and 6)

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

⁶ Directive. 6.3.

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 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

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

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).

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 Government's information requires application of the disqualifying condition at AG ¶¶ 19(a) (*inability to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*).

Because the Government's information supported the SOR allegations, it was incumbent on Applicant to provide information to support application of any or all of the AG ¶ 20 mitigating conditions. In assessing the applicability of the mitigating conditions, I note that Applicant's financial problems began as early as 2004, the year he claims he filed bankruptcy. He made some poor financial decisions after leaving the Army in 2001, and his finances worsened around 2009 and 2010 with the loss of a job, the foreclosure of his house, and the end of his marriage. These circumstances might support application of the following:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant did not meet his burden of production here because he did not show that he acted responsibly or that his financial problems will not recur. There is no information from any lender that cancels his debt or reflects other resolution that ended his obligation on a debt. He did not present any information showing he has been paying any of his debts; that supports any dispute he has with his creditors; or that he has received any professional financial counseling or other assistance with his debts. The security concerns established by the Government's information are not mitigated.

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). Applicant presented plausible explanations for the circumstances surrounding his financial problems. Nonetheless, he did not produce corroborating information sufficient to resolve the doubts raised herein about Applicant's suitability for access to classified information. 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.g: 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