



**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. 15-00524

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not submit sufficient information to overcome the security concerns raised by his criminal conduct and financial problems. His request for eligibility for access to classified information is denied.

Statement of the Case

On June 26, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his 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 is clearly consistent with the interests of national security for Applicant to have access to classified information.¹

On August 21, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). 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 decision in this case on the June 8, 2017 AGs.²

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On November 28, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on December 6, 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.⁴ Applicant timely responded to the FORM. He submitted additional information, but did not object to the admissibility of any of the information presented in the FORM. The record closed on January 18, 2017. I received the case on October 1, 2017.

Findings of Fact

Applicant has worked for the same defense contractor since November 2001. The Government alleged in the SOR that in November 2004, Applicant was charged with grand larceny and that the charge was dismissed in August 2005 (SOR 1.a); that on December 23, 2011, he was charged with possession of marijuana, a charge to which he pleaded guilty in January 2012. He was fined and his driver's license was suspended for six months (SOR 1.b). The Government also alleged that Applicant was charged three months later with driving on the driver's license that was suspended for the offense listed in SOR 1.b. He was fined and the suspension of his license was extended another three months (SOR 1.c). Finally, the Government alleged that in April 2014, he was charged with public profanity and intoxication. In May 2014, Applicant was adjudged guilty, fined and assessed court costs (SOR 1.d). (FORM, Items 1 and 3)

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

² My decision in this case would have been the same under either version of the adjudicative guidelines.

³ See Directive, Enclosure 3, Section E3.1.7. In the FORM, Department Counsel relies on seven enclosed exhibits (Items 1 – 7).

⁴ See Directive, Enclosure 3, Section E3.1.7.

Applicant admitted all of the Guideline J allegations. They are also documented in his e-QIP and the FBI arrest record provided by the Government. Applicant discussed all of his arrests with a government investigator in subject interviews conducted in August and October 2014. (FORM, Items 1 – 3, 5 – 7)

Under Guideline F, the Government alleged that Applicant owes \$23,619 for 12 delinquent or past-due debts (SOR 2.a – 2.l). In response to the Guideline F allegations, he denied SOR 2.b, 2.i, and 2.j, but admitted the other nine allegations. Additionally, these allegations are documented by Applicant's e-QIP disclosures and by the credit reports provided in the FORM. Applicant discussed his debts with a government investigator during subject interviews conducted in August and October 2014. (FORM, Items 1 – 6, 8) In addition, I make the following findings of fact.

During an August 26, 2014 interview with a government investigator during his background investigation, Applicant stated that his financial problems began around 2008 and arose from his own poor financial decisions. He also claimed that uncovered costs resulting from emergency surgery in 2012 exacerbated his financial difficulties. At the time of his interview in August 2014, he described his finances as "shaky." During a second subject interview in October 2014, Applicant stated that he had a plan to contact all of his creditors and to resolve his debts. In response to the FORM, Applicant submitted a handwritten note stating his intent to contact his creditors and pay his debts.⁵ There is no information in the file that shows he has paid or otherwise resolved any of his debts. (FORM, Items 5 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 AG ¶ 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.

⁵ Applicant also provided a copy of the FORM and its exhibits; however, he made no other comments and provided no other documents in support of his case.

⁶ Directive 6.3.

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

Criminal Conduct

The Government's information about Applicant's arrest record reasonably raised the security concern expressed at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Available information requires the application of the disqualifying conditions at AG ¶¶ 31(a) (*a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness*) and 31(b) (*evidence (including,*

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).

but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted).

As to the pertinent mitigating conditions at AG ¶ 32, none apply. Although Applicant's last instance of criminal conduct occurred in 2014, all of the alleged conduct occurred after Applicant started working for a defense contractor and after he received a security clearance in 2004. Applicant did not provide any information that suggests he has been rehabilitated, that his circumstances have changed, or that he is remorseful for his criminal conduct. On balance, he did not mitigate the security concerns under this guideline.

Financial Considerations

The Government's information about Applicant's delinquent 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.

Available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(b) (*unwillingness to satisfy debts regardless of the ability to do so*); and 19(c) (*a history of not meeting financial obligations*). Applicant did not provide information sufficient to support application any of the mitigating conditions under AG ¶ 20. At most, his discussion of his emergency surgery raises the potential applicability of AG ¶ 20(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.

For this mitigating condition to apply, Applicant must also establish that he acted responsibly under the circumstances. He did not do so. As to the other mitigating conditions available to Applicant, he did not corroborate his claimed intentions to resolve his debts and there is no information in this record about the state of his current finances. He has not received financial counseling or other assistance in resolving his debts. The security concerns raised by the adverse information about Applicant's finances are not mitigated.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines F and J, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Doubts about his suitability remain because of Applicant's longstanding financial problems and his history of criminal conduct. He has not established that his financial problems have been or will be resolved, and his criminal conduct is too recent to justify a conclusion it will not recur. 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 J:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a – 2.l:	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