



**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. 16-00062

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2017

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On December 12, 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

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

On June 9, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations). 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 4, 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 November 16, 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 December 16, 2016. I received the case on October 1, 2017.

Findings of Fact

The Government alleged in the SOR that Applicant owes \$82,141 for ten delinquent or past-due debts (SOR 1.a – 1.j). Applicant admitted all of the SOR allegations and provided explanations and additional documents. In his e-QIP, Applicant disclosed some of his past-due debts. A credit report obtained during a prior background investigation, as well as two credit reports obtained during his current reinvestigation, document all of the debts alleged in the SOR. Further, Applicant discussed the debts listed in the SOR during an October 8, 2015, personal subject interview (PSI) conducted by a government investigator. SOR 1.a – 1.j are established as facts. (FORM, Items 1 – 7) In addition, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor for whom he has worked in an information technology (IT) position since January 2011. He has worked overseas since 2012. Aside from a period of unemployment between July 2010 and January 2011, Applicant has worked in the IT field without interruption since 2001. (FORM, Items 3 and 4)

Applicant was married from February 1994 until divorcing in November 2005. He has an 18-year-old child from that marriage. Applicant remarried in January 2006. He attributes his financial problems to his unemployment in 2010, the costs of his 2005

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.

divorce, including legal fees, extra housing costs, and alimony and child support obligations. He also claimed that his ex-wife is responsible for a portion of the debt left from their marriage; however, he has not presented information to show which debts are her responsibility. (FORM, Items 2 and 4)

In response to the SOR and FORM, Applicant provided credit report information showing an improved credit score and a reduced number of accounts. He did not provide a full credit report with details of why or when some of his debts were removed from his credit history. He further claimed that his finances are sound; however, he did not provide any detailed information, such as a monthly budget or payment records, to support that claim. (FORM, Item 2; Response to FORM)

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. 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.

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. 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

⁵ Directive. 6.3.

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

controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

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.⁹ 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.¹⁰

Analysis

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 unemployment and divorce raises the potential applicability of AG ¶ 20(b):

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(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 reflected in a 2010 credit report, Applicant's financial problems are at least seven years old. He did not establish that he has actually paid any of his debts; that his ex-wife is responsible for debts that arose during their marriage; or that he has taken any verifiable action to improve his finances. Applicant's reliance on the mere absence of delinquent accounts in more recent credit reports is flawed. To be persuasive, information showing action to address the debts must also be provided. Further, there is no indication here that Applicant sought financial counseling, or that he had a verifiable basis to dispute any of his debts. Finally, he did not provide any information about his current finances; for example, there is no budget, no record of payments or negotiations with creditors, and no bank statements on which I can base any assessment of the risk associated with Applicant's financial health in the future. 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 Guideline F, 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 the fact that he has not supported his claims that those problems have been or will be resolved. 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