



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 16-00664

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems began in 2012. Since then, he has not acted responsibly in addressing his debts. Applicant failed to provide information sufficient to mitigate the resulting security concerns about his finances. Accordingly, his request for a security clearance is denied.

Statement of the Case

On December 30, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his employment with a defense 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 interests of national security for Applicant to have a security clearance.¹

On May 23, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer), provided a supporting document, and requested a hearing. I received the case on March 21, 2017, and I convened the requested hearing on June 14, 2017. Department Counsel proffered three items identified as Government Exhibits (Gx.) 1 – 3, which I admitted without objection.³ Applicant testified in his own behalf and did not present any additional documents. I received a transcript of the hearing (Tr.) on June 23, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$52,794 for four delinquent or past-due debts (SOR 1.a - 1.d). In response to the SOR, Applicant admitted all of the SOR allegations, and he provided information showing the debt at SOR 1.d was satisfied in June 2016. (Answer; Tr. 10 - 12) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 47 years old and works as an information technology (IT) specialist executive for a defense contractor. He has held that position since September 2014. He has worked in IT for several different employers since early 2013. Applicant served in the United States Marine Corps from December 1991 until December 2011. He worked as a communications specialist, and he retired after 20 years of honorable service as a gunnery sergeant. Applicant was trained as a communications specialist and has held a security clearance since the beginning of his military career. While on active duty, Applicant deployed to Iraq between August 2005 and April 2006, and between July 2007 and February 2008. (Gx. 1; Tr. 6, 25 – 28)

Applicant did not want to retire when he did. He lost control over his decision of when to retire because of the combination of a disciplinary reduction in rank and physical problems that prevented him from passing annual fitness testing. He had about six months advance notice of his retirement date. (Gx. 1; Tr. 25, 45 – 46)

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

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

³ A copy of Department Counsel's "discovery letter" and a list of the Government's exhibits also are included as Hearing Exhibits (Hx.) I and II, respectively.

Applicant and his wife have been married since July 2003. Together, they have two children, ages 18 and 14. Applicant also has three other children from before or outside his marriage. They range in age from 8 to 22. Applicant pays child support to the mother of his 8-year-old child. (Tr. 37 – 42)

Applicant's wife owns outright a house she purchased in 1993 in State A. In 2005, Applicant co-signed with his wife a \$30,000 cash-out refinance of that house. They used the money to pay off his wife's debts. His wife lived there for about six months in 2005 before joining Applicant when he transferred to a new duty station in State B. She then rented out the house. In 2007, Applicant moved his family to State C for his next duty assignment. However, Applicant and his wife separated in 2008 and she returned to her house in State A. Applicant provided her with financial support until 2011, when she and their children moved back in with Applicant in State C. The State A house has remained empty since 2011. The debt at SOR 1.a represents the unpaid mortgage for the State A house. (Tr. 20 – 24, 29, 55 – 64)

Applicant avers his wife grossly neglected their financial obligations during his second deployment to Iraq. When she and the children moved back in with him in 2011, they agreed to stay together until their youngest child, now age 14, graduates from high school. At that time, Applicant and his wife will divorce. Applicant views the house in State A as solely his wife's obligation. He has only contacted the lender three times since 2011 about how to resolve that delinquency, for which he acknowledges his joint liability. Applicant claims the lender will not deal with him because he is "not the primary" borrower. The debt at SOR 1.a remains unresolved. (Tr. 22 – 23, 25, 32 – 34, 64 – 65)

The debt alleged at SOR 1.d was a delinquent credit card account that became the subject of a civil judgment against Applicant. In response, he made monthly payments to the clerk's office at the courthouse where the judgment was entered. He paid off the debt in 2016. (Answer; Gx. 2; Gx. 3; Tr. 42)

The debt at SOR 1.c is for a delinquent credit card. Applicant has not acted to resolve that debt. (Gx. 2; Gx. 3; Tr. 40)

The debt at SOR 1.b represents the remainder after resale of a trailer Applicant purchased in 2005. The seller repossessed it in 2012 and Applicant has not resolved the debt because the creditor will not agree to a repayment plan. Applicant disagrees with the amount listed in the credit reports. (Gx. 2; Gx. 3; Tr. 34 – 36)

Applicant attributes his financial problems to a combination of his wife's inability or unwillingness to help manage their finances, and to the loss of income he experienced when he left the military. His income on active duty was about \$6,000 a month. After he left, his retired pay was about \$2,000 and, after a few months of unemployment, his first job paid only about \$1,900 monthly. Combined with ongoing child support obligations, Applicant struggled to make ends meet. He is current in his

child support payments, on the mortgage for his house in State C, his taxes, and his other regular financial obligations. Applicant has little in the way of savings and generally lives paycheck to paycheck. He has not consulted with a financial counselor since sometime in 2007, and he did not present any information regarding a budget or a cogent plan for resolving his remaining debts. (Tr. 23, 43 – 54)

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(d) 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

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.

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 compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Financial Considerations

The Government’s information reasonably raised a security concern about Applicant’s finances. That concern appears at AG ¶ 18, as follows:

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.

More specifically, the record as a whole 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*). Available information documented the SOR allegations that Applicant owes a significant level of past-due or delinquent debt. The same information shows Applicant has willfully neglected his debts absent some form of enforcement, such as the civil judgment for the debt at SOR 1.d. As of the hearing, Applicant had not constructively addressed his remaining debts, and he did not present information that shows he is likely to do so in the near future.

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;

⁷ See *Egan*; AG ¶ 2(b).

(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; and

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

None of these mitigating conditions apply. Applicant's debts are recent and ongoing. Applicant did not expect to retire when he did, but he had sufficient time to address his post-retirement employment options or to adjust his personal finances in the face of a pending loss of income. Even were his retirement a wholly unexpected event, Applicant has not demonstrated he acted reasonably in response to those circumstances over the next five years. The only debt payments he has made involved a necessary response to a civil judgment against him. Otherwise, it is likely he would not have paid that debt. Finally, Applicant has not sought any professional financial counseling or other assistance since 2011, when his financial problems started. On balance, Applicant did not mitigate the security concerns raised by the Government's information.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). I am mindful of Applicant's 20 years of honorable military service. Nonetheless, his lack of action to pay or otherwise resolve his debts over the six years that have passed since he retired serve only to reinforce the doubts about his suitability for access to classified information raised by his financial problems. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved against the Applicant.

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.d:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge