



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 17-00778
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

17-00778

Decision

MALONE, Matthew E., Administrative Judge:

A fair and commonsense assessment of the record evidence as a whole shows the security concerns raised by Applicant's financial problems and a felony theft conviction are mitigated. His request for a security clearance is granted.

Statement of the Case

On October 7, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for 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 15, 2017, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F).² Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on January 24, 2018, and convened the requested hearing on March 7, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 - 5. Applicant and one witness testified. Applicant also proffered Applicant Exhibits (AX) A – G. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on March 14, 2018.

Findings of Fact

Under Guideline F, the Government alleged Applicant owed \$10,824 for four delinquent or past-due debts (SOR 1.a – 1.d). About 80 percent of that total was for an unpaid income tax debt of \$8,057 (SOR 1.d). It was further alleged that in February 2011, Applicant was charged with three counts of felony fraudulent use of a credit card; that he was later convicted of felony theft of property, placed on probation for three years, and ordered to pay \$11,000 in restitution. (SOR 1.e).

In response, Applicant denied SOR 1.a and 1.d, with explanations and supporting documents. He admitted, with explanations and supporting documents, the other three allegations. (Answer) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 35 years old and has worked in the information technology (IT) field since at least 2003. He was hired by his current employer, a defense contractor, in August 2015, for a position that requires eligibility for a security clearance. Before being hired for his current job, Applicant was self-employed as a software developer for about four years. Applicant and his wife have been married since October 2009. They have two children, ages 6 and 3. This is Applicant's first application for a security clearance. When he submitted his e-QIP, he disclosed most of the adverse information that is the subject of the SOR. (GX 1; Tr. 6- 7)

From January 2003 until April 2010, Applicant worked as a network engineer for an insurance company. His duties included purchasing IT equipment and supplies for support of the insurance company. He also traveled for work assignments. About three

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. My decision in this case would have been the same under either version.

or four years before his employment with the insurance company ended, Applicant was issued a credit card to use when paying for work-related procurement and travel expenses. Until sometime in 2009, Applicant would submit receipts for those charges to an office administrator. That person would then process the information and Applicant would be reimbursed. Applicant's supervisor, also a family friend, told Applicant to charge for gas and mileage in addition to equipment costs and other travel expenses (e.g., hotels, rental cars, airfare, etc.), something that Applicant now knows was not allowed. For about a year before he left the company, Applicant's use of the company credit card expanded to include gas and other expenses not directly related to his work; in other words, personal expenses. (Answer; GX 3; Tr. 31 – 32)

In 2009, Applicant's employer was purchased by another company and many of the procedures related to Applicant's claims for expenses either changed or received more stringent scrutiny than before. Additionally, the office administrator to whom Applicant submitted his claims for payment left the company. In March or April 2010, Applicant was advised that his claims for expenses constituted misuse of the credit card. Additionally, it was determined that he had not properly documented his work-related purchases of IT equipment. The results of an internal investigation resulted in a one-week suspension without pay. Not long thereafter, Applicant resigned. He did not receive any written documentation, such as a letter of reprimand, nor was he verbally counseled about the investigation. (Answer; GX 3; Tr. 32 – 34, 43 – 50)

About a year after he left the insurance company, Applicant was advised that the results of the investigation had been forwarded to law enforcement for prosecution as a crime of theft. He was subsequently charged with felony fraudulent use of a credit card. After a warrant for his arrest was issued, he turned himself in to the local sheriff's office and was released on bond. Pending trial, Applicant thought his attorney had negotiated a plea bargain whereby he would plead guilty to a lesser included misdemeanor charge. However, representatives of the insurance company urged prosecutors to press felony charges. In 2012, Applicant pleaded guilty to a reduced charge of felony theft of property. Rather than contest the charge, Applicant wanted to resolve the matter because of the expense involved in doing so, and more important, because his wife was pregnant with their first child and he could not risk incarceration. (Answer; GX 1 – 3; Tr. 32 – 34)

Applicant was placed on three years of probation, which he successfully completed in 2015. He also was ordered to make restitution of \$11,000, the amount the insurance company claimed it lost through Applicant's actions. Applicant took money from his retirement savings and made restitution in 2012. Applicant acknowledged that he misused the card in some ways, but not to the extent for which he was charged. Nonetheless, he has accepted full responsibility (Answer; GX 1; GX 3; Tr. 49 – 50)

As addressed in SOR 1.d, Applicant incurred a debt for unpaid federal income taxes. The SOR alleged the debt pertained to his 2013 federal income taxes; however, in his response to DOD adjudicators' interrogatories, Applicant provided information showing the debt actually arose from his 2014 income taxes. Applicant explained, both in

a personal subject interview (PSI) during his background investigation, in response to interrogatories, in response to the SOR, and at hearing, that the debt arose when he lost income as a self-employed IT consultant in 2014. The contract from which he earned most of his income between 2011 and 2015 began to shrink in scope and eventually ended a few months before he was hired by his current employer. On advice of his accountant, Applicant timely filed an extension of his 2014 taxes in early 2015; however, when his taxes came due, he did not have sufficient income to pay either his state or federal taxes. As to the state taxes, they were resolved after Applicant was served with a garnishment and he made a lump sum payment in March 2017. In 2016, Applicant established a monthly repayment plan with the IRS whereby he has been making regular monthly payments of \$103. In conjunction with annual diversions of any tax refunds to which Applicant is entitled, the \$8,057 debt alleged at SOR 1.d had been reduced, as of July 2017, to about \$6,800. As of the hearing in this matter, Applicant established that he continues to make those monthly payments as required. Applicant has never failed to file his state or federal income tax returns as required. (Answer; GX 1 – 3; AX E; Tr. 30 – 31, 51 – 53)

Applicant's loss of income in 2014 also resulted in other delinquent debts, all of which have been paid or otherwise resolved. The debt at SOR 1.a was for an unpaid credit card Applicant thought had been paid in 2013. After receiving the SOR, Applicant researched the debt and found it was still outstanding, so he paid it. The debt at SOR 1.b arose from the creditor's claim that he did not return cable television equipment when he cancelled their service. Applicant was unaware he still owed anything for that account until he received the SOR. In response, Applicant established that he resolved the debt. The debt alleged at SOR 1.c was for an unpaid medical copayment. Applicant has paid that debt. (Answer; GX 1; GX 3; GX 4; AX B – D; Tr. 28 – 30)

Applicant and his wife recently purchased a house, and their monthly finances reflect a positive net cash flow. They live frugally, they have incurred no new unpaid debts, and they manage their money according to principals learned from a nationally-known financial advisor. Applicant's supervisor and a co-worker, who have known Applicant for the past two years, testified that he is reliable and trustworthy in all matters at work. They are both aware of the Government's concerns in this case, but expressed no reservations about allowing Applicant to occupy a position of trust. The same sentiments were expressed in written recommendations submitted on his behalf. (AX A; Tr. 34 – 42, 59 – 65)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ and consideration of the pertinent criteria and adjudication policy in the adjudicative

³ See Directive. 6.3.

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 interest⁴ 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.⁵ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government 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.⁶

Analysis

Financial Considerations

The Government established that Applicant has experienced financial difficulties since about 2014, that he incurred unpaid personal and tax debts as a result of those difficulties, and that he was convicted of a felony offense arising from misuse of a

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

company credit card. That information reasonably raises a security concern about Applicant's finances that is articulated 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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

By contrast, Applicant resolved the debts at SOR 1.a – 1.c. He also acted promptly to resolve his state and federal tax debts, which arose from the loss of his income as a self-employed IT consultant. While the federal tax debt is still not paid off, Applicant has been making consistent payments for two years pursuant to an agreement with the IRS.

As to Applicant's felony theft conviction, that event occurred eight years ago. Applicant completed all terms of his sentence. Of note is that he promptly made restitution of the entire amount at issue, choosing to deplete his retirement savings rather than make other arrangements that may have delayed full restitution for the corporate victim. Further, those circumstances appear to constitute an isolated event that, in view of the more current positive information about Applicant's character, is unlikely to recur. All of the foregoing supports application of 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;

(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 person has received or is receiving counseling for the problem and/or 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.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive information about Applicant's trustworthiness that was provided by associates from his current employment. Applicant was fully candid and forthcoming about his financial problems and his criminal conviction. I am particularly mindful of the financial nature of his criminal conduct. However, his misuse of a credit card was not the result of any financial stress. Applicant was not motivated by any pressing financial problems at the time. He accepted responsibility for misusing the card, even though he knew he should not have done so. His debts arose later, when he started to lose income as an independent consultant. It reflects well on Applicant's suitability for clearance that he timely addressed his tax debts, that he resolved all of the other debts documented in the Government's information, and that his current finances are stable and managed responsibly. A fair and commonsense assessment of the record evidence as a whole shows his conviction for theft was an aberration and that the security concerns about his finances are mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.e:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge