



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



In the matter of:)	
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)	
[NAME REDACTED])	ISCR Case No. 17-00820
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not produce sufficient information 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 15, 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 DOD Directive 5220.6 (Directive).

On June 1, 2017, 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 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 August 10, 2017, 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 15, 2017, 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 submit any additional information and the record closed on September 14, 2017. I received this case on January 16, 2018.

Findings of Fact

Under Guideline F, the Government alleged in the SOR that Applicant failed to file, as required, his federal income tax returns for tax years 2008 through 2012 (SOR 1.a); and that he owes \$5,054 for four delinquent or past-due debts (SOR 1.b – 1.e), one of which (SOR 1.b) is a \$2,920 delinquent tax debt for the 2013 tax year. Applicant admitted all of the SOR allegations. (FORM, Items 1 and 2)

Applicant disclosed in his e-QIP that he filed his 2011 tax return late and owed \$1,800. During a subject interview on October 20, 2016, he provided information that showed he did not file his returns for the years addressed in SOR 1.a and that he owed the delinquent tax debt alleged in SOR 1.b. A May 2016 credit report provided by the Government documents the remaining debts alleged in the SOR. (FORM, Items 3 – 5). Applicant has not paid or otherwise acted to resolve his debts and has not filed his past-due tax returns.

Applicant is a 51-year-old employee of a defense contractor, for whom he has worked since March 2016. He has worked steadily for several different employers since at least April 2004. Applicant served in the military between November 1989 and December 1993. (FORM, Item 3)

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, Section E3.1.7. In the FORM, Department Counsel relies on five enclosed exhibits (Items 1 – 5).

⁵ See Directive, Section E3.1.7.

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 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. 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

⁶ See Directive, 6.3.

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

⁸ See Directive, E3.1.14.

⁹ See Directive, E3.1.15.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

Analysis

Financial Considerations

Available information about Applicant's finances reasonably raises a security concern under Guideline F, 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.

Applicant's admissions to the SOR and in his subject interview, as well as the information contained in a 2016 credit report, require application of the disqualifying condition at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(f) (*failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required*). In response to the Government's information, Applicant did not provide any information, on which application of the mitigating conditions at AG ¶ 20 might be based. The security concerns under this guideline 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). Available information is not sufficient to resolve the doubts raised by the Government's information about Applicant's suitability for clearance. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

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.e:	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