



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



In the matter of:)
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)
 [NAME REDACTED]) ISCR Case No. 17-01178
)
)
 Applicant for Security Clearance)

Appearances

For Government: Alison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not properly manage his money before he and his ex-wife divorced. Added expenses and loss of his spouse's income caused him to fall behind on his bills. He now has addressed most of his delinquent debts in a responsible manner and his finances are much improved. Available information is sufficient to mitigate the security concerns about Applicant's financial problems. His request for a security clearance is granted.

Statement of the Case

On December 31, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew 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 3, 2017, 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) and requested a hearing.

I received the case on August 4, 2017, and convened the requested hearing on September 25, 2017. The parties appeared as scheduled. Department Counsel proffered five items identified as Government Exhibits (GX) 1 – 5. I *sua sponte* excluded GX 4 from the record,³ but admitted the other four exhibits without objection. Applicant testified and proffered three items identified as Applicant Exhibit (AX) A – C, which I admitted without objection. Additionally, Applicant submitted post-hearing documents identified as AX D, which is included in the record without objection. I received a transcript of the hearing (Tr.) on October 4, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$13,176 for 12 delinquent or past-due debts (SOR 1.a - 1.l). In response, Applicant admitted, with explanations, all of the SOR allegations. In his e-QIP, Applicant disclosed two delinquent debts. Credit reports obtained by investigators during his background investigations, and Applicant's discussions of his finances during an August 2016 subject interview document all of the debts alleged in the SOR. (Answer; GX 1 – 3; GX 5) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 48 years old. He has worked for his current employer since May 2007, and previously worked for a different defense contractor for two years. Applicant first received a security clearance in 2005. (GX 1)

Applicant was married from June 2003 until divorcing in July 2016 after a three-year separation. He has two children, ages 19 and 16, from his marriage. He currently lives with his fiancée and her two children. (GX 1; Tr. 42)

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 Tr. 23 – 26.

Applicant attributes his financial problems to his divorce, although he also acknowledged that he did not manage his finances as well as he should have during his marriage. When he and his ex-wife separated, he had too many bills and no longer could rely on his ex-wife's income to help meet their obligations. Additionally, Applicant had to pay \$600 in child support each month and had to pay for his own residence, as he had moved out of the marital home when they separated. (GX 5; Tr. 38 – 39, 73)

After Applicant met with a government investigator in August 2016, he began trying to resolve his past-due debts. He has paid the debts alleged at SOR 1.c and 1.e – 1.j. He also is repaying the debts alleged at SOR 1.a and 1.d through monthly payment plans negotiated with each of those creditors. To resolve his debts, Applicant took a loan of about half the balance of his 401k retirement savings account. He is repaying that loan through \$20 deductions from his paycheck. (Answer; AX A – D; Tr. 40, 47 – 59)

The debt at SOR 1.b is for a delinquent retail store credit card that Applicant opened in 2011. To negotiate a settlement, he contacted that creditor, who told him they would not accept anything less than the total amount past due. (GX 2; GX 3; Tr. 59 – 60)

SOR 1.k alleges a civil judgment entered against Applicant to enforce an unpaid debt for furniture he and his ex-wife purchased before their separation. The debt went unpaid after he left the marital home and had to take on additional expenses with less household income. Applicant has not received any response from the law firm representing the creditor and does not have the information he needs to negotiate a resolution. This debt appears in his February 2016 credit report, but does not appear on his March 2017 credit report. (GX 2; GX 3; Tr. 60 – 61)

Applicant admitted the debt at SOR 1.l, an unpaid rent account incurred in May 2015, but claims he resolved the debt when he disputed it with the creditor. In his August 2016 interview, he claimed he was unaware of this debt. The February 2016 credit report produced by the Government reported this debt, but it does not appear on the March 2017 credit report in the record. (Answer; GX 2 and 3)

Applicant's current finances are sound. He meets all of his current obligations on time, and he has never failed to meet his obligations regarding his taxes. Applicant estimates that he has about \$200 remaining each month after expenses, including the monthly debt repayments documented in his exhibits. He also avers he has improved the way he manages his personal finances. Applicant considered using a credit counseling service, but he did not want to pay for something he has learned he can do himself. (AX B; AX C; Tr. 61 – 68)

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 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

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.

⁷ See *Egan*; AG ¶ 2(b).

Analysis

Financial Considerations

The Government's information reasonably raised a security concern about Applicant's finances. That concern is stated 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*) and 19(c) (*a history of not meeting financial obligations*). Available information documented the SOR allegations that Applicant owes or owed a significant level of past-due or delinquent debt. 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;
- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems arose from his separation and divorce. They might not have been so severe had he managed his personal finances more prudently during his marriage. Nonetheless, he incurred debts he could not timely pay after a loss of his

wife's income and increased expenses tied to child support and the need to pay for his own separate residence. In response to those circumstances, Applicant has taken responsible steps to resolve his debts and improve his finances. The record evidence as a whole supports application of AG ¶¶ 20(a), 20(b), and 20(d). I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's debts did not arise from misconduct and do not reflect adversely on his judgment and reliability. His actions to resolve his debts are sufficient to satisfy the security concerns raised by the Government's information. A fair and commonsense assessment of the record as a whole shows that the Government's security concerns 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.l: 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