



**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. 18-00279

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

09/25/2018

Decision

MALONE, Matthew E., Administrative Judge:

Available information is not sufficient to overcome the security concerns raised by the Government's adverse information about Applicant's financial problems. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On June 28, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 February 16, 2018, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On April 23, 2018, 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 May 3, 2018, and was informed he 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 The record closed on June 2, 2018, after Applicant did not respond to the FORM. I received this case for decision on September 19, 2018.

Findings of Fact

Under Guideline F, the Government alleged in the SOR that Applicant owes \$451,230 for seven delinquent or past-due debts (SOR 1.a – 1.g). Of those debts, the mortgage account addressed at SOR 1.b constitutes about 92 percent of the total indebtedness at issue. The debts alleged at SOR 1.c – 1.e are for delinquent child support accounts totaling \$13,416. Additionally, the SOR alleged that Applicant filed for Chapter 13 bankruptcy protection in March 2017, and that the petition was dismissed three months later for failing to file all of the documents required by the bankruptcy court. Applicant admitted, with explanations, all of the SOR allegations. He also provided documentation in support of his responses to SOR 1.b – 1.f. (FORM, Items 1 and 2)

The SOR allegations are supported by Applicant's admissions in his Answer, and by the Government's documents. In addition to the facts thus established, I make the following findings of fact.

Applicant is a 40-year-old employee of a defense contractor, for whom he has worked since June 2016. Applicant has never been married, but has one child, age 12, for whom he is obligated to pay monthly child support. Since early 2000, Appellant has been employed by several different federal contractors, with seven periods of unemployment lasting between two months (in 2007) and seven months (in 2000 and 2001). His most recent period of unemployment was between March 2011 and June 2011. Applicant first received a security clearance in June 1998. (FORM, Items 3 and 8)

When Applicant submitted his e-QIP, he did not disclose any adverse financial information. Credit reports obtained by government investigators and by DOD CAF adjudicators during the ensuing background investigation documented the allegations at SOR 1.b – 1.h. Applicant discussed those debts during a personal subject interview with a government investigator on February 9, 2017, and he attributed his financial problems to an unspecified period of unemployment. (FORM, Items 2, 6 – 8)

² See Directive, Enclosure 2.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on eight enclosed exhibits (Items 1 – 8).

⁴ See Directive, Section E3.1.7.

As to SOR 1.a, a state tax lien entered against Applicant, he claims he has made arrangements with the state tax authority to make payments on that debt, with other unsatisfied portions recouped through diversion of any state tax refunds to which he might be entitled. He did not otherwise document his claim in this regard. This debt remains unresolved.

The mortgage debt addressed in SOR 1.b was in forbearance as of the date of the SOR. That meant that the mortgage lender had agreed not to foreclose on the mortgage pending a loan modification. To that end, as alleged in SOR 1.h, Applicant filed a Chapter 13 bankruptcy petition in March 2017 for the sole purpose of obtaining an automatic stay of any foreclosure actions being contemplated by the lender. The automatic stay of foreclosure implemented by the bankruptcy court was lifted in May 2017 when the Chapter 13 petition was dismissed. Applicant submitted information with his Answer that shows a loan modification was agreed upon at the beginning of this year; however, he did not present information in response to the FORM that shows he has been making payments as required by the new mortgage. (FORM, Items 2 and 5)

The child support debts alleged at SOR 1.c – 1.e have been in repayment since at least October 2017. Applicant acknowledged that some of the money he pays each month is allocated to his arrearage, and he characterized those debts as still delinquent. The report of his payments submitted with his Answer lists the accounts as “current.” The total of the three accounts has increased to \$15,122. It is not clear from this record if Applicant’s payments are garnishments or if he initiated a repayment plan of his own volition. (FORM, Item 2)

The debt at SOR 1.f is for a delinquent student loan. Applicant claims to have established a repayment plan by which he pays \$135 each month. The information he provided to document his claim shows that as of March 28, 2018, he was a month behind in his payments. He also did not establish when the plan began. (FORM, Item 2)

Applicant also claimed that he has established a repayment plan to satisfy the debt at SOR 1.g. The only information regarding this claim shows Applicant paid \$136 on January 10, 2018, but it did not identify the payee or provide any other information about Applicant’s repayment activity. (FORM, Item 2)

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 ¶ 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

⁵ See Directive, 6.3.

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 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. 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.⁹

Analysis

Financial Considerations

This record reasonably raises 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

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

⁷ See Directive, E3.1.14.

⁸ See Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

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 has experienced significant financial difficulty over the past few years. He has accrued unpaid taxes, he has missed mortgage and child support payments, and has other unmet financial obligations. This information requires application of the disqualifying condition at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*).

In response, Applicant claimed that his financial problems were caused by unemployment; however, his last known period of unemployment ended in June 2011, more than seven years ago. Applicant is credited with taking action to save his house from foreclosure and obtaining a mortgage modification, but he did not establish that he is making payments as required under the new agreement. As to child support, he showed that payments are being made, but it is reasonable to conclude that his pay is being garnished to satisfy what appears to be a growing child support arrearage. The state tax lien remains unresolved, and Applicant did not support his claim of actions taken to satisfy this debt. The information submitted regarding his student loans and one other delinquency do not show a consistent, reliable effort to repay those debts.

In summary, Applicant did not produce any information that warrants consideration of any of the AG ¶ 20 mitigating conditions. He did not mitigate the security concerns under this guideline raised by the Government's information.

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). Applicant's information did not resolve the doubts about his suitability for access to classified information that were raised by his financial problems. 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.h:	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