



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



In the matter of:)	
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)	
[NAME REDACTED])	ISCR Case No. 17-04294
)	
)	
Applicant for Security Clearance)	

Appearances

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

10/25/2018

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 are mitigated. His request for a security clearance is granted.

Statement of the Case

On July 18, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal 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 January 19, 2018, Applicant was issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline (AG) for financial considerations (Guideline F).² Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on August 9, 2018, and convened the requested hearing on October 1, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 and 2. Applicant testified and proffered Applicant Exhibits (AX) A – C. All exhibits were admitted without objection. Additionally, I held the record open after the hearing to allow Applicant time to submit additional relevant information.³ The record closed on October 5, 2018, when I received AX D,⁴ Applicant's timely post-hearing submissions and Department Counsel's waiver of objection thereto. I received a transcript of the hearing (Tr.) on October 11, 2018.

Findings of Fact

Under Guideline F, the Government alleged Applicant owed \$23,754 for six delinquent or past-due debts (SOR 1.a – 1.f). The \$18,302 debt alleged at SOR 1.a represents 77 per cent of the total debt at issue. In response, Applicant admitted SOR 1.a – 1.c and denied SOR 1.d – 1.f. With each response, he provided explanations and supporting documents.⁵ In addition to the facts established by Applicant's admissions, all of the SOR allegations are supported by Applicant's disclosures in Section 26 (Financial Record) of his e-QIP and by a credit report obtained by DOD CAF in December 2017. (Answer; GX 1; GX 2; Tr. 9 – 11) I also make the following findings of fact.

Applicant is 33 years old and has worked for a federal contractor since May 2016. He served in the U.S. Marine Corps from October 2003 until he was honorably discharged as a corporal in June 2008. Thereafter, he returned home to State A and attended college full time, receiving a bachelor's degree in May 2012. After graduating from college, Applicant worked as a landscaper and as a call center representative until January 2016. He previously held a security clearance while in the military. Applicant has never been

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

² DOD adjudicators applied the adjudicative guidelines issued by the Director of National Intelligence on December 10, 2016, effective for all adjudications on or after June 8, 2017.

³ Tr. 60 – 61.

⁴ AX D (seven pages) consists of Applicant's forwarding email, Department Counsel's email waiving objection to admissibility, and five pages of excerpts from his bank accounts showing scheduled debits from his account and a recorded debit from his account, all part of a debt management plan.

⁵ Tr. 11 – 14.

married, but has a three-year-old daughter by a former girlfriend. (GX 1; Tr. 6 – 7, 47 – 50)

In January 2016, Applicant moved from State A, where he grew up, to State B in search of better-paying job opportunities. His employment between 2012 and 2015 paid him an average monthly salary of about \$1,300. In May 2016, when he was hired by his current employer after four months of unemployment, his salary was about \$40,000 annually. It is now about \$60,000 annually. Applicant also receives a \$694 monthly disability payment from the Department of Veterans Affairs. (GX 1; Tr. 35 – 36, 54)

Applicant's mother was diagnosed with cancer around 1997, when Applicant was 12 years old. After Applicant joined the Marine Corps, he was able to provide financial assistance to his mother in the form of medical services and supplies not covered by her insurance. After he was discharged, he and his only sibling, a sister, were their mother's primary care givers until she died in February 2014. Applicant's care for his mother continued to include medical services and supplies, as well as physical care. As his mother declined, or when traditional treatments were not effective, Applicant also paid in-home care, and for non-traditional treatments and diets for his her. From August 2012 until his mother's death, Applicant's employer would not work with Applicant on a schedule that would allow Applicant to be with his mother when his sister (who worked for the same company) could not. The result, in addition to even more expenses for his mother's care, was lost income due to unpaid time away from work. To make ends meet, Applicant relied heavily on credit cards and other forms of personal credit. Until early 2015, he generally was able to stay current on his debts by making minimum payments each month. A credit report obtained during his background investigation showed the debts alleged in the SOR all became delinquent in 2015 and 2016. That report also showed that Applicant successfully paid off other personal credit accounts and loans before 2016. (Answer; GX 2; Tr. 25 – 28, 32 – 33, 51 – 52)

Not long after his mother died in 2014, Applicant learned that his girlfriend was pregnant with his child. Their daughter was born in December 2014 after a pregnancy complicated by the mother's diabetes. Again, Applicant unexpectedly became a sole means of support. In addition to regular health care, Applicant had to pay for prenatal diabetes treatment and medications. After the baby was born, Applicant and his now ex-girlfriend entered into a court-supervised agreement whereby he pays \$743 in monthly child support. In addition to the pregnancy-related expenses Applicant bore in 2014, he also paid legal fees associated with the child support agreement. He also paid for a short-lived relocation of his daughter and her mother from State A to another state, then back to State B. They now live near Applicant and he frequently is able to see his daughter. Applicant has never missed a child support payment. (Answer; GX 1; Tr. 28 – 29, 34, 43, 57)

After Applicant moved to State B, he was able to meet all of his current expenses while unemployed, but struggled to pay the debts that had become delinquent before he moved. Applicant alternated between negotiating with his creditors for settlement

agreements and making whatever payments he could. In 2017, Applicant began researching debt resolution firms that might help him resolve his debts. He also used a law firm that successfully challenged old or inaccurate entries in his credit history and had them removed. In October 2017, Applicant established repayment plans with the SOR 1.a – 1.c creditors and made monthly payments to them until March 2018. At that time, he consulted a debt management and resolution company that advised him to stop making those payments. Once the debts were past-due for a few months, he was told, the firm could negotiate settlement agreements with all of his creditors for payments that could be made through a single debt management plan (DMP). On September 10, 2018, Applicant finalized a DMP through which he is paying \$345 each month for the debts at SOR 1.a – 1.d. The total amount of those debts listed in the SOR was \$22,877. The debt management and resolution company negotiated a settlement amount of \$10,468 for all four of those debts. The plan has a completion date of August 2022. Applicant paid or otherwise resolved the debts at SOR 1.e and 1.f. (Answer; AX A – D; Tr. 31, 36 – 42, 43 – 47)

Applicant has not accrued any new delinquencies since he started working for his current employer. He presented a budget that was constructed as part of the DMP process. It shows that after making his DMP payment, he has about \$100 remaining each month after expenses. (GX 2; AX A; Tr. 39 – 40, 42, 53 – 56, 58 – 60)

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 (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

⁶ See Directive. 6.3.

consistent with the national interest⁷ 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.⁸ 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.⁹

Analysis

Financial Considerations

The Government established that Applicant has experienced financial difficulties since about 2014, and that when the SOR was issued, those debts remained unresolved. 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.

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

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; AG ¶ 2(b).

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

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

By contrast, the record shows that Applicant's financial problems arose from circumstances beyond his control; however, those circumstances are unlikely to recur. He resolved the debts at SOR 1.e and 1.f, and is resolving his other debts using the assistance of a reliable debt resolution company. Applicant has started making payments that will eliminate his debts in about four years. Additionally, the total remaining debt at issue has been reduced by more than half that alleged in the SOR. Applicant lives modestly and within his means. He is meeting all of his current financial obligations and has not accrued any new past-due or delinquent debts. 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; and
- (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.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is Applicant's honorable military service. His testimony at the hearing was sincere and straightforward. Applicant's financial problems were not the result of poor judgment or irresponsible conduct. Instead, he took responsibility for the care of others and is now acting responsibly in trying to resolve his debts to the best of his ability. Notwithstanding the fact that his DMP payment has resulted in a more limited cash flow each month, Applicant's response to his financial problems tends to show that he will avoid future financial problems. A fair and commonsense assessment of the record evidence as a whole shows 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.f: 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