



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-03426
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/10/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by the Government’s information about his financial problems. He also did not mitigate security concerns raised by the Government’s information showing he tried to conceal adverse information about his finances when he submitted a security clearance application in March 2013. His request for a security clearance is denied.

Statement of the Case

On March 22, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his employment at 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 national interest for Applicant to continue to hold a security clearance.¹

On August 8, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for personal conduct (Guideline E) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. However, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) timely requested a hearing³ and the case was assigned to me on November 18, 2014.

I convened a hearing on December 18, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 4.⁴ Applicant testified and presented Applicant's Exhibit (Ax.) A. I held the record open after the hearing to receive additional relevant information from Applicant. DOHA received the transcript of hearing (Tr.) on January 6, 2015. The record closed on January 12, 2015, when I received Applicant's post-hearing submissions. They are included in the record as Ax. B - H. All exhibits were admitted without objection.⁵

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$67,733 for 27 delinquent or past-due debts (SOR 1.a - 1.aa). In response, Applicant admitted all of the allegations except for SOR 1.z and 1.aa. Applicant disputes 1.z, an unpaid satellite television account, claiming he turned in the equipment when he terminated the account. He denies the SOR 1.aa debt because the balance alleged is "much more than it should be."

Under Guideline E, the Government alleged that Applicant deliberately made false official statements by omitting from his 2013 EQIP, the debts referenced at SOR

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

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ A copy of Department Counsel's request for hearing and a letter notifying Applicant of that request are included in the record as Hearing Exhibit (Hx.) 1.

⁴ An index of the Government's exhibits is included in the record as Hx. 2.

⁵ A copy of Department Counsel's memorandum forwarding Applicant's post-hearing submissions, and waving objections thereto, is included in the record as Hx. 3. Although Department Counsel identified Ax. B - G, Applicant also forwarded an additional document, a copy of an excerpt from his Wells Fargo online bank account register, which I have included in the record as Ax. H.

1.j, 1.l, 1.n, 1.u, 1.x, 1.z and 1.aa. (SOR 2.a).⁶ In response to the SOR, Applicant denied SOR 2.a and stated that “[e]verything that was asked of me from investigators I completed.”

In addition to the facts established by Applicant’s admissions, I make the following findings of fact:

Applicant is a 30-year-old employee of a defense contractor, for whom he has worked as a systems administrator since August 2012. From April 2008 until August 2012, Applicant worked as systems support technician at a technical college, where he also took classes to earn his associate’s, bachelor’s, and master’s degrees in various information technology (IT) systems subjects. His master’s degree is in IT management. (Answer; Gx. 1; Tr. 6)

Applicant and his wife have been married since January 2012. They have two children, both under five years old, and they have owned their home since September 2011. Applicant served in the U.S. Army and the National Guard between 2002 and 2004, when he elected to transfer to the Individual Ready Reserve (IRR). Applicant was honorably discharged in 2009 as a sergeant. His decorations and awards include an Army Commendation Medal for his combat service in Iraq between 2003 and 2004. Applicant first received a security clearance in 2001 as part of his military duties. (Answer; Gx. 1; Gx. 3; Ax. B; Ax. C; Tr. 6 - 11)

Applicant has an excellent record in the workplace. His performance evaluations and statements of recognition by his supervisors reflect favorably on Applicant’s expertise, commitment, and reliability. (Ax. A; Ax. F; Ax. G)

In 2012, Applicant was hospitalized for seven days with a malady that was never properly diagnosed. He underwent a series of tests and procedures that exceeded his medical insurance coverage. The debts alleged at SOR 1.h, 1.l, 1.k, 1.l, 1.n, 1.q, 1.s, 1.t, 1.w, and 1.x, which total \$6,979, represent the uncovered portions of his medical treatment. (Answer; Gx. 2 - 4; Tr. 33 - 34, 39 - 40)

Applicant paid for his tuition through a series of student loans; however, he has been unable to repay those loans. Those debts are alleged in SOR 1.a, 1.b, and 1.d - g, and total \$43,950. In about May 2014, he took out a loan from his 401k retirement account and started making sporadic payments of between \$400 and \$500. However, he stopped making payments on his student loans when his mother’s roof needed to be repaired. After he repays his 401k loan, he intends to take out another such loan to apply to his student loans under a repayment agreement, dated January 9, 2015, which is documented in Applicant’s post-hearing submissions. Under the terms of the agreement, all of Applicant’s student loans are consolidated into one account and he is

⁶ SOR 2.a originally listed all of the debts alleged in SOR 1.a. At hearing, Department Counsel moved to amend SOR 2.a to reflect only the seven debts represented by SOR 1.j, 1.l, 1.n, 1.u, 1.x, 1.z and 1.aa.

to pay \$337 each month from January to May 2015. If he does so, his payments may be reduced to \$237 and the interest on his debt will effectively be eliminated. (Answer; Ax. E; Tr. 34 - 36, 42 - 44)

The debt alleged at SOR 1.c is owed to the Defense Finance and Accounting Service (DFAS) for a military re-enlistment bonus Applicant is required to repay because he converted to the IRR. Applicant explained that when his wife lost her job while she was pregnant with their younger child, he could not continue to meet his Army Reserve training obligations and had to change his drilling status. He has not repaid this debt. (Answer; Gx. 3; Tr. 36 - 37)

Applicant's current finances enable him to meet his current regular obligations each month. After all payroll deductions, he and his wife earn about \$4,000 each month. Applicant contributes about 15 percent pre-tax of his gross pay, or about \$760 monthly, from each paycheck to his 401k account. He estimates he and his wife have about \$200 remaining each month after expenses, including child care for about \$700 each month. He acknowledged that he and his wife are living paycheck to paycheck, but insists they have not incurred any new unpayable debts. Aside from a few payments to his student loans in 2014, Applicant has not made any payments on the debts listed in the SOR. An excerpt from his checking account shows several cash withdrawals of several hundred dollars each, but he did not include information about the purpose of those transactions. Applicant has not sought or received any financial counseling or other professional financial assistance. (Gx. 3; Ax. H; Tr. 45 - 50, 60 - 62)

When Applicant submitted his EQIP in March 2013, he disclosed a civil judgment in debt for \$1,093, which he had satisfied in 2008. However, he did not disclose any other debts or adverse financial information as required by the questions in EQIP Section 26. On April 9, 2013, Applicant was interviewed as part of his background investigation. In discussing his answers to financial questions in his EQIP, Applicant confirmed that his negative answers were truthful. He was then shown the credit report included in this record as Gx. 2, which contained 30 delinquent or past-due debts. Applicant explained that he omitted his student loans because he thought they were either current or not past-due within the meaning of the questions asked. As to others, he stated that he was not aware of the debts listed. However, as to several other debts, including the DFAS debt alleged at SOR 1.c, he stated that he did not list them because doing so might hinder his ability to get his security clearance. At hearing, he testified his answers either were mistakes or resulted from not having enough time to complete the questionnaire. He acknowledged to the investigator that it was a mistake to omit this information from his EQIP. (Gx. 1; Gx. 3; Tr. 55 - 59)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁷ 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(a) 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 interest⁸ 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.⁹

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

⁷ See Directive. 6.3.

⁸ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.¹⁰

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations under this guideline. The facts established raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, this record supports application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

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, or a death, divorce or separation), 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides

¹⁰ See *Egan*; AG ¶ 2(b).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The mitigating condition at AG ¶ 20(a) does not apply because Applicant's past-due debts are multiple and remain unpaid or otherwise unresolved. The mitigating condition at AG ¶ 20(b) applies, in part, because a portion of Applicant's debt, his medical costs when he was hospitalized, arose from circumstances beyond his control. However, this factor cannot be fully applied, because Applicant has taken little or no action to pay or otherwise resolve his debts. Thus, he has not acted responsibly under the circumstances.

As to the remaining mitigating factors, Applicant did not present information that might support their application. The mitigating condition at AG ¶ 20(d) does not apply because available information does not show that Applicant has acted in a timely fashion to repay his debts or to otherwise resolve them. Applicant is credited with establishing a student loan rehabilitation plan; however, he did not do so until a month after his hearing in this matter, and there is not yet a record of regular and reliable payments made. As to AG ¶¶ 20(c) and (e), Applicant testified that he has not sought any counseling or other professional help for his financial problems, and he did not support through documentation his dispute over the debts at SOR 1.z and 1.aa.

At present, Applicant's finances appear sound, in that, he and his wife are able to meet their regular monthly expenses. But cause for concern still exists because of unexplained cash withdrawals from his checking account, no record of payments through his nascent student loan rehabilitation effort, and the lack of a cogent plan to address his other past-due debts. On balance, Applicant has not mitigated the security concerns raised by the Government's information.

Personal Conduct

The Government initially alleged under Guideline E that Applicant's omission from his EQIP of all of the debts alleged under Guideline F constituted an intentionally false official statement to the Government. After amending the SOR at hearing, the allegation centered on only seven of the original 27 debts alleged. Regardless of the number of debts omitted, if supported by the information presented, this conduct would raise a security concern that is addressed at AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, Applicant's conduct may be disqualifying under AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied the SOR 2.a allegation, which left the burden of proof with the Government. I conclude that all available information probative of Applicant's intent when he answered the Section 26 questions shows he meant to withhold from the Government relevant information about his finances. At his hearing, he testified that his omissions occurred either because he had little time to complete his EQIP or because he simply made mistakes on the form. However, these explanations are not persuasive given the fact that Applicant has held a security clearance since 2001 and knew, or should have know, what information was required from him to accurately complete the questionnaire.

Further, in response to SOR 2.a, Applicant stated that he responded honestly to questions put to him by investigators, presumably during his April 2013 interview. A review of the summary of that interview (Gx. 3) shows that Applicant initially verified as truthful all of his answers to the financial questions in the EQIP. Upon being confronted with the contents of a March 2013 credit report (Gx. 2), Applicant admitted that he deliberately did not list at least five of the debts contained therein. He did so because he was concerned that he might not receive his security clearance. I conclude from this information that AG ¶ 16(a) applies.

I have also considered the following pertinent AG ¶ 17 mitigating conditions:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's admissions of intentional falsification during his subject interview do not constitute "prompt, good-faith efforts to correct," as contemplated in AG ¶ 17(a). The

mitigating condition at AG ¶ 17(b) does not apply, because Applicant did not present any information showing he was advised by anyone about how to answer the EQIP questions at issue. AG ¶ 17(c) does not apply because Applicant's conduct was not a minor or remote event. The Government's reliance on the unqualified truthfulness of each individual in whom it reposes its trust cannot be overstated. Applicant has not mitigated the security concerns raised by his personal conduct.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is an honorably-discharged Army sergeant, who served his country in a combat zone. He is a valued member of his company and his work has earned him several instances of personal recognition. Nonetheless, the positive information in his background is not sufficient to overcome the Government's concerns about both his financial state and his honesty. The record as a whole reasonably shows that doubts remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

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.aa:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge