



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



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| In the matter of: |) | |
| |) | |
| [NAME REDACTED] |) | ISCR Case No. 14-06885 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: Reese M. Stidham, IV, Esq.

02/23/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems arose, in part, through circumstances beyond his control. However, he has not acted responsibly in response to his financial problems, and he did not establish that he is unlikely to incur delinquent debts in the future. The security concerns about Applicant’s financial problems are not mitigated. His request for a security clearance is denied.

Statement of the Case

On December 19, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew 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 May 2, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on August 26, 2015, and I convened a hearing on October 22, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 5. Applicant testified and presented Applicant's Exhibits (Ax.) 1 - 9. He also presented one witness. A transcript of the hearing (Tr.) was received on November 2, 2015.

Findings of Fact

Under Guideline F, the Government alleged that, as of the date of the SOR, Applicant owed \$36,255 for 15 past-due or delinquent debts (SOR 1.a - 1.o). In response, Applicant denied the allegations at SOR 1.c, and 1.f - 1.i. He admitted the remaining allegations. Applicant also provided an explanatory statement with his Answer. However, the Government provided sufficient information to establish the controverted issues of fact raised by Applicant's denials.³ (Gx. 3 and 4; Tr. 91) In addition to the facts established by these exhibits and by Applicant's admissions, I make the following findings of fact.

Applicant is 42 years old and works as a senior consultant for a large defense contractor. His position requires eligibility for access to classified information. Applicant was hired for this job in December 2013, but did not actually start working and receiving income until February 2014. Applicant served in the U.S. Air Force from October 1993 until he retired as a technical sergeant in November 2013. He held a security clearance throughout his military career. (Gx. 1)

Applicant was married from August 1996 until separating from his ex-wife in June 2012 and finalizing a divorce in March 2015. They have two children, ages 9 and 16. The older child lives with Applicant while custody of the younger child is shared equally. While deployed overseas from August 2012 until August 2013, Applicant paid his ex-wife \$815 each month for support. To finalize the divorce and child custody agreement, he incurred legal fees for his divorce of about \$18,000. He still owes his lawyer about \$6,000. As of the hearing, Applicant was engaged to be married in December 2015. (Gx. 1; Gx. 2; Tr. 32)

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 See Directive E3.1.14.

When Applicant submitted his EQIP, he disclosed a delinquent debt for a car loan that was resolved. Applicant argues that the debt was incurred as a result of his ex-wife's deliberate attempts to ruin his credit. He claimed she did not pay the car loan while he was deployed in 2012 and 2013, but Applicant was able to resolve the delinquency and retrieve the car when he returned from Afghanistan. Applicant disputes the validity of the debts at SOR 1.b, 1.c, and 1.e on the basis that his ex-wife is responsible for at least half of each debt. However, Applicant did not present any documentation to support his claims. (Answer; Gx. 1; Gx. 2)

Applicant insists his financial problems arose from a brief period of unemployment after he retired from the Air Force. The only income he had from November 2013 until he started working for his current employer was his \$1,200 monthly retired pay. Although Applicant was diagnosed when he left the Air Force as suffering from post-traumatic stress syndrome (PTSD), as well as service-related back and foot disabilities, he did not receive the Department of Veterans Affairs (VA) disability benefit payments to which he was entitled until April 2014. Now he receives about \$2,100 each month from the VA. When he started working for his current employer, he was paid an annual salary of about \$60,000. He now earns \$63,000. After his divorce, his retired pay was reduced to about \$500 each month. His total annual income is now about \$94,000. (Tr. 27 - 29, 35 - 37, 71 - 72)

Applicant discussed his financial problems and reviewed his credit report with a Government investigator during a subject interview on March 4, 2014. He indicated that the past-due mortgage account (alleged at SOR 1.a) had been brought current through an agreement with the mortgage lender. He also indicated that, although he was unaware of many of the debts discussed during the interview, he would take action to pay or otherwise resolve them. Eight months later, he hired a law firm that specializes in credit information verification and resolution of credit reporting discrepancies. Applicant pays them \$30 each month, but he knows they do not provide debt repayment services. To date, the law firm has had five accounts removed from his credit report and is disputing or requesting information about 15 other accounts. No information was provided showing that the law firm's actions resolved any of the accounts listed in the SOR. Applicant also did not present any information showing that he himself had paid or resolved any of the SOR debts. (Answer; Gx. 2; Ax. XX; Tr. 42 - 43, 47 - 50, 54 - 57)

In 2011, Applicant took out a personal loan to repay some of the debts he owed at that time. In 2015, he obtained from the same lender another loan for about \$9,000. He is repaying that loan at a monthly rate of \$277. Applicant also received income tax refunds in 2013 and 2014 totaling \$11,000. None of that money was used to repay any of the debts alleged in the SOR. He also continues to carry a high balance (\$7,900) on a military exchange credit card. The only financial counseling Applicant has received consisted of mandatory pre-retirement financial training. (Tr. 58, 62, 75 - 79)

Applicant has a good reputation in the workplace and his military record was excellent. He deployed twice to Iraq and twice to Afghanistan. In both combat zones, he was subjected to explosions from incoming mortar rounds near the operating bases to

which he was assigned. He has been recognized for his service on numerous occasions. A friend of 20 years with whom Applicant served in the Air Force commends Applicant for his dedication and trustworthiness. He regards Applicant as a good father and a generous friend. (Tr. 83 - 90)

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(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 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

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.

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

Analysis

Financial Considerations

Available information is sufficient to support the SOR allegations under this guideline. The facts established reasonably 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*). Applicant incurred numerous debts while he was still in the military. His financial problems worsened after his retirement and most of his debts remain unresolved.

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

⁷ See *Egan*; AG ¶ 2(b).

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

AG ¶ 20(a) partially applies because the initial causes of his recent indebtedness – his divorce and his lack of employment after retirement from the Air Force – will not recur; however, his delinquencies are ongoing and he has not taken any action to resolve them directly. His use of a credit repair law firm avoids the issue of his responsibility for the debts he incurred. He has had sufficient income and other funds with which to pay many of the debts listed in the SOR, yet he has not shown any progress in that regard. He also did not explain why he waited eight months after his subject interview to hire the credit repair law firm. Based on the foregoing, the mitigating conditions at AG ¶¶ 20(b) and (d) also do not apply.

As to AG ¶ 20(c), Applicant received some financial training before he left the military, but it does not appear to have helped him manage his personal finances in civilian life. Finally, as to AG ¶ 20(e), Applicant claims he is disputing some of his debts, but he did not document or fully articulate the bases of those disputes. In summary, Applicant did not meet his burden of producing sufficient evidence to refute the SOR allegations or to mitigate the security concerns raised by the Government's information.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). I note, in particular, Applicant's military service in combat zones. The record also reflects well on Applicant's reputation at work. However, without sufficient information showing good judgment in the face of his past-due debts, doubts remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, any lingering doubts must be resolved against 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.o: | 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