



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 14-04557
)
 Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant is repaying a tax debt incurred in 2012. Another debt arose from circumstances beyond his control. His current finances are sound and he is not likely to experience financial problems in the future. His request for a security clearance is granted.

Statement of the Case

On November 28, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, which included Applicant's responses to interrogatories from Department of Defense (DOD)

adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.²

On October 14, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On April 22, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on May 22, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on June 21, 2015, without any response to the FORM from Applicant. The case was assigned to me on July 31, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$11,631 for three delinquent debts (SOR 1.a - 1.c). Applicant admitted all of the SOR allegations. (FORM, Items 1 and 2) In addition to his admissions, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He requires a security clearance for his job as a draftsman with a defense contractor, where he has worked since October 2012. Applicant is the oldest of seven children raised by a single mother. He obtained an associate's degree in 2010, paying his own way with money from work and small student loans, all of which have been paid off. Even while attending school since 2006, Applicant has been steadily employed. (FORM, Items 2 - 4)

When he submitted his EQIP, Applicant disclosed the debt alleged at SOR 1.b. In 2007, he wanted to help his mother by co-signing a loan to buy a car. The expectation was that she would make the monthly payments; however, his mother lost the car to repossession in 2009. Applicant has not lived with his mother since 2008 and was unaware of the delinquency until 2012, but there have been no efforts to recoup from him any balance remaining after resale. (FORM, Items 2 - 4)

The debt alleged at SOR 1.a is for a delinquent cell phone account. Although it was listed in interrogatories sent to Applicant by DOD adjudicators, it is not listed in either credit report in the record. It also was not discussed in Applicant's subject interview on July 13, 2014. (FORM, Items 4 - 6)

¹ See DOD Directive 5220.6 (Directive), as amended, Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by the Directive.

³ See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included six exhibits (Items 1 - 6) proffered in support of the Government's case.

The debt alleged at SOR 1.c is for unpaid taxes in 2012. The welder's job Applicant held that year was the first time any of his employers did not withhold federal income taxes. He was not aware of this when the tax bill came due, and he was unable to pay the full amount right away. In his response to interrogatories, he provided documentation of his repayment plan with the IRS. This debt is not reflected in either of the credit reports provided with the FORM.

Applicant's finances are sound. There is no information in this record that suggests Applicant is not meeting his regular obligations or that he has incurred any additional unpaid debts. After accounting for all of his monthly expenses, Applicant has about \$450 in positive cash flow. (FORM, Item 4)

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(a) 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 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

⁵ Directive, 6.3.

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

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

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.⁹ 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.¹⁰

Analysis

Financial Considerations

Available information supports the allegations in the SOR. The facts established herein raise a security concern 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, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). Applicant incurred the SOR 1.c tax debt in 2012 and he is jointly liable for the delinquent car loan at SOR 1.b. The validity of the SOR 1.a cell phone is questionable.

By contrast, Applicant is repaying the tax debt through an agreement with the IRS. The car repossession debt arose from his mother's failure to pay and is not the subject of any identifiable collection effort against Applicant. Applicant's action to resolve his tax debt was proactive. Along with the health of his current finances, the record suggests that these purported financial problems will not recur. The security concerns about Applicant's finances are mitigated.

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(a). A fair and commonsense assessment of all available information shows that any doubts about Applicant's suitability for access to classified information have been resolved.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.c: For Applicant

Conclusion

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge