



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-05133
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems arose through a combination of unforeseen circumstances and his earlier financial neglect. However, he has taken responsible steps to correct his finances and he is unlikely to incur delinquent debts in the future. The security concerns about Applicant’s financial problems are mitigated. His request for a security clearance is granted.

Statement of the Case

On February 5, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his

employment at a defense contractor.¹ 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.²

On February 20, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline³ 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 21, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 9. Applicant testified and presented Applicant's Exhibits (Ax.) A - D. I held the record open after the hearing to receive additional information from Applicant. A transcript of the hearing (Tr.) was received on October 29, 2015. The record closed on November 10, 2015, when I received Applicant's post-hearing submission (Ax. E) All exhibits were admitted without objection.

Findings of Fact

Under Guideline F, the Government alleged that, as of the date of the SOR, Applicant owed \$27,443 for 14 past-due or delinquent debts (SOR 1.a - 1.n). In response, Applicant admitted 1.a - 1.c, 1.e, and 1.h - 1.n. He denied the remaining allegations. All of the debts alleged are documented in the credit reports presented by Department Counsel and were discussed with Applicant in his subject interviews on March 27 and November 25, 2013. (Gx. 4 - 6) In addition to the facts established by these exhibits and by Applicant's admissions, I make the following findings of fact.

Applicant is 34 years old. He holds a bachelor's degree in computer science and is studying for a master's degree in cybersecurity. Applicant enlisted in the Navy in July 1999 and served as a fire control technician until leaving active duty in July 2003. He subsequently affiliated with the Naval Reserve in 2003 and was a drilling reservist until March 2006. At that time, he was recalled to active duty and served at sea, most recently aboard a forward-deployed aircraft carrier until December 2011. (Gx. 1; Gx. 2; Tr. 6)

¹ In January 2013, Applicant was hired as an intern for the defense contractor that sponsored his application for clearance. Applicant was let go in April 2013 when his clearance was not granted because of the issues in this case. That company will rehire Applicant if his industrial clearance is granted. Since April 2013, he has worked for several different companies, including his current employer in a position that requires he obtain a position of trust under DOD Regulation 5220.2-R. After discussion with the parties, I concluded DOHA still has jurisdiction over the original request for clearance and the facts that are at issue in this case. (Tr. 44 - 46)

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

³ 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).

Applicant held a security clearance while he was in the Navy. In June 2009, the Department of the Navy Central Adjudication Facility (DONCAF) issued Applicant an SOR citing, in relevant part, security concerns about his finances. Applicant's response to the SOR provided sufficient information for DONCAF to award him a clearance in March 2010, conditioned on meeting certain reporting requirements over the next six months. Applicant disclosed in his EQIP that in December 2011, his clearance was revoked. He stated in his first subject interview that the revocation was based solely on his failure to comply with the DONCAF's reporting requirements. He further claimed that he did not receive the letter stating those requirements. Because he no longer possessed the clearance required for his rate, Applicant was released early from his active duty recall with a general discharge. Thereafter, he returned to school full time under the GI Bill to complete his bachelor's degree and to begin studying for a master's degree.⁴ (Gx. 2; Gx. 7 - 9; Tr. 10, 92 - 95)

Applicant was married from July 1999 until divorcing in July 2006. He remarried in October 2007, but again divorced in November 2010. Applicant and his current wife, an electronics engineer who he met while both were in the Navy, have been married since March 2011. They recently had a child together. In addition, Applicant adopted his wife's two children and has three other children of his own, two of whom live with Applicant and his wife. (Gx. 1; Tr. 78, 92, 99)

Applicant's financial problems started around 2003 or 2004. He was overextended financially and, by his own admission, he did not pay close attention to such matters. Being in the service, he received a regular paycheck and he often lived aboard ship, which obviated the need to attend to things like rent or budgeting for food and clothing. Applicant also accrued student loan debts that came due when he did not initially complete his studies at a state university. When he went through his divorce in 2006, he was required to pay child support. He also had to pay other expenses when he was divorced a second time in 2010. After Applicant was unexpectedly discharged from the military at the end of 2011, he did not have any income other than stipends from the GI Bill for his college work until he found employment from March 2012 until October 2012. He was unemployed until January 2013, when he was hired as an intern by the company that sponsored his request for clearance. (Gx. 1 - 3; Tr. 62 - 63)

Applicant avers he knew in 2011, when he was issued an SOR by the DONCAF, that he had to resolve his past-due debts and improve his overall finances. His efforts began in earnest when he submitted his EQIP in 2013. In his first subject interview in March 2013, Applicant stated his intention to verify the status of his debts and to resolve them as soon as he was able. At the time of his second interview in November 2013, Applicant stated that he had paid or otherwise resolved the debts later alleged at SOR 1.d (a disputed charge for a remote learning textbook), 1.f (a disputed debt for a credit card issued by a previous employer), 1.g (a disputed cell phone account), and 1.j (a

⁴ Applicant is trying to correct the classification of his discharge through the Board for Correction of Naval Records (BCNR).

debt for a missed appliance rental payment). In response to the SOR and at his hearing, Applicant provided documentation of the resolution of those debts, as well as the debts at SOR 1.a (the remainder after resale of a repossessed automobile) and 1.i (a past-due cable television account from Applicant's time at a Navy training facility). Applicant's exhibits, including credit reports from 2015 provided by both Department Counsel and the Applicant, show those debts have been paid or are no longer listed in his credit history. (Gx. 6; Ax. A; Ax. E; Tr. 46 - 47, 95 - 96).

Most of the debt alleged in the SOR consists of delinquent student loan accounts. The debt at SOR 1.b was resolved through wage garnishment after Applicant challenged the debt. He claimed he had taken out a loan for college courses but never actually matriculated. He stated he never received any funds from that loan, but there may have been a disbursement to the school. After a settlement was agreed to and the school repaid a portion of the total amount of the loan, Applicant's pay was garnished to satisfy the remaining balance. (Gx. 2; Gx. 3; Tr. 47 - 54)

As to the remaining student loan debts alleged at SOR 1.j - 1.n, Applicant had to bring those loans current before he could finance the tuition for his master's degree. He completed a student loan rehabilitation program for the federally-subsidized loans and they have been consolidated into a single loan that is now in deferment as long as Applicant carries a minimum course load. State education loans alleged at SOR 1.k - 1.m have been paid. (Answer; Gx. 4; Gx. 6; Ax. A - C; Tr. 31, 54 - 64)

As an intern in 2013, Applicant was paid at \$17 an hour. Since then, his pay from different jobs has varied between \$55,000 annually to his current salary of about \$67,000 annually since June 2014. He twice has received financial counseling advice from a large insurance and finance company, with whom he and his wife have begun a structured savings plan. Applicant and his wife, who earns about \$70,000 annually, recently bought a house using a VA loan. A prerequisite of receiving that financing benefit was the completion of a personal finance and budget course. They received a \$7,000 refund from their 2014 income tax return, which they used to pay off their car loans and some of his wife's debts. Available information shows Applicant has a significant positive cash flow each month and that he has not incurred any new delinquencies. (Gx. 4; Gx. 6; Ax. A; Tr. 77 - 89, 99 - 102)

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 (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:

⁵ See Directive. 6.3.

(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. 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.⁷ 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.⁸

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:

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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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 has a history of poor financial management and of debts dating back to his time in the Navy.

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

AG ¶ 20(a) partially applies because it appears Applicant's financial problems are largely resolved, and his debts were incurred more than five years ago. However, he acknowledged that before 2011, he was not as attentive to his finances as he should have been, a fact that reflects adversely on his past judgment. In the same vein, AG ¶ 20(b) applies to the extent his debts were caused by uncontrollable circumstances, such as his early discharge from the Navy and his second divorce. While I am mindful of the fact that he already was overextended financially when he was discharged from the Navy, available information about his 2011 loss of clearance shows that it was due to non-responsiveness to a DONCAF requirement that was not his fault. In that sense his discharge was unforeseen. Nonetheless, since 2013, Applicant has demonstrated

sound judgment by paying or resolving most of his debts, and by improving his overall financial well being.

AG ¶ 20(c) applies because Applicant has received financial advice and counseling from a large insurance and finance company, and as part of his application for a VA-backed mortgage. This has helped him focus on eliminating debt and saving prudently. Applicant's efforts to resolve his debts began in earnest about two years ago. But available information also shows that he was trying to get his financial house in order around the time of his 2011 discharge. AG ¶ 20(d) applies. Finally, the debts at SOR 1.d, 1.f, and 1.g were resolved in Applicant's favor after he disputed them. AG ¶ 20(e) applies.

All of the foregoing shows that Applicant is not likely to incur delinquent debts in the future. He and his wife earn a better than average annual salary that leaves sufficient cash remaining each month -- after expenses, debt payments, and savings -- with which to avoid unforeseen financial challenges. On balance, I conclude that the security concerns raised by the Government's information about Applicant's finances are mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a responsible husband and father to his own children and to his wife's children whom he adopted. He has acted responsibly to resolve his financial problems and to stabilize his current finances. A fair and commonsense assessment of all available information shows that the doubts about Applicant's continued suitability for access to classified information raised by his financial problems have been satisfied.

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.n:	For Applicant

Conclusion

In light of all of the foregoing, 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