



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-02905
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not carry his burden of producing information that mitigates the security concerns about his past-due or delinquent debts. His request for access to classified information is denied.

Statement of the Case

On September 5, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for access to classified information required as part of his employment with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

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

On November 5, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² On November 25, 2015, Applicant responded to the SOR and requested a decision without a hearing. On December 18, 2015, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on January 4, 2016, and timely submitted additional information in response to the FORM. The record closed on February 3, 2016, and the case was assigned to me on March 15, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$21,224 for the six delinquent or past-due accounts listed at SOR 1.a - 1.f. In his Answer, Applicant admitted, with explanations, all of the allegations. (FORM, Item 1) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is a 56-year-old employee of a defense contractor, where he has worked since March 2014. Applicant served in the U.S. Army from November 1979 until he was honorably discharged in March 1992. Since then, Applicant generally has been employed by various defense contractors. Applicant was unemployed from August 2012 until January 2013 after the contract a previous employer held was terminated. Applicant has a good reputation in the workplace, as attested to by his supervisor. (FORM, Item 2; Response to FORM)

Applicant and his wife have been married since December 1990. He has one son and two stepchildren, all adults. When Applicant was interviewed about his finances by a Government investigator in December 2014, he alluded to medical problems his wife had experienced. He also mentioned that his son had incurred legal fees, but Applicant did not provide details about either circumstance. (FORM, Items 2 and 3)

Applicant first received a security clearance in July 1980. His clearance was revoked by the DOD CAF in May 2013 because he failed to respond to a request for additional information about his finances. In the EQIP he submitted to regain his clearance, Applicant disclosed the debts listed at SOR 1.a - 1.d and 1.f. All of the debts alleged in the SOR are further documented in two credit reports obtained by the Government as part of the investigation and adjudication of this case. Applicant incurred a tax debt to the IRS for the 2013 tax year (SOR 1.f) because he mistakenly thought his employer at the time was withholding taxes from his pay. Applicant entered into a repayment plan with the IRS and has since resolved the debt. (FORM, Items 1 - 5; Response to FORM)

The other debts alleged in the SOR arose because Applicant allowed himself to become financially overextended. He cited his wife's medical problems, his son's legal

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

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included seven exhibits (Items 1 - 7) proffered in support of the Government's case.

fees, and his five-month period of unemployment as contributing factors. Applicant claimed that he retained the services of a debt resolution company to negotiate settlements with his creditors around the time he submitted his EQIP. With his response to the SOR, Applicant submitted copies of settlement offers from each of the creditors referenced in SOR 1.a - 1.e. They were sent to him between September 2010 and October 2014. He did not present information showing he had acted on those offers. In response to the FORM, Applicant submitted a letter from the aforementioned debt resolution company stating that he had completed their debt settlement program. However, he did not provide any pertinent details about the plan, such as which debts were included in the plan or actual proof of payments. (FORM, Items 1 - 3; Response to FORM).

Applicant has a good reputation at work. His supervisor, with whom Applicant has worked in various capacities for about 18 years, trusts Applicant and has observed him handle classified information properly and with due discretion. (Response to FORM)

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. 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 interest⁵ 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

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

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.⁸ 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.⁹

Analysis

Financial Considerations

The Government met its burden of production in support of 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*). This record presents reasonable security concerns about a significant amount of unpaid debt and a history of financial problems since at least 2010.

By contrast, I also have considered the following pertinent AG ¶ 20 mitigating conditions apply:

(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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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; and

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

Applicant's debts and financial problems are recent, because they are ongoing and, with exception of his tax debt (SOR 1.f) unresolved. Application of AG 20(d) is limited to that debt. As to the other five delinquencies at issue, Applicant did not present much detail about the financial effects of his wife's medical problems or his son's legal issues. Nonetheless, I accept that those factors, along with his period of unemployment, had an adverse impact on his finances. But mitigation is not available because Applicant admittedly allowed himself to become financially overextended. He also did not provide sufficient information to establish that he acted responsibly in the face of his financial problems. It appears he entered into a debt repayment plan, but he did not show what debts were resolved through that plan. It also was not established that he received any financial counseling to help him better manage his finances. Finally, Applicant did not present information about his current finances that would support a finding that he is unlikely to again be overextended.

In summary, Applicant was on notice as early as May 2013, when adjudicators asked him for more information about his finances, that the onus was on him to address the Government's concerns about these issues. It may be that the debts alleged here have been resolved. It was up to Applicant to show that. On balance, Applicant has not mitigated the security concerns about his finances.

In addition to evaluating the facts and applying 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). I have considered Applicant's Army service and his supervisor's high regard for his work and reliability. Nonetheless, Applicant did not carry his burden of presenting sufficient information to refute the SOR allegations or to mitigate the security concerns established by the Government's information. Without such information, doubts remain about his suitability for access to classified information. Because protection of the national interest is the principal focus 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.f: Against Applicant

Conclusion

In light of all available information, 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