

DATE: December 20, 2007

In Re:)
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)
 -----) ISCR Case No. 06-25839
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the security concerns raised by his financial problems. Between 2002 and 2005, he resolved all of his debts through a Chapter 13 bankruptcy petition, except for a \$20,000 tax delinquency not legally dischargeable through bankruptcy. He has since paid his tax debts using funds from his retirement savings. His delinquent debts were due, in part, to circumstances beyond his control. His current finances are sound, his circumstances have changed, and he is not likely to incur such delinquencies in the future. Clearance is granted.

STATEMENT OF THE CASE

On December 7, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance needed for his current employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to give Applicant a security clearance. On March 30, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines² under Guideline F (financial considerations).

Applicant timely responded to the SOR. His response was interpreted as a request for a decision without a hearing,³ and Department Counsel submitted the government's case in a File of Relevant Materials (FORM). Applicant responded to the FORM on August 12, 2007, and explained that he did not understand the need to affirmatively request a hearing and made clear it was his intent all along to have a hearing in this matter.⁴ The case was subsequently assigned to me on October 2, 2007, and I convened a hearing on November 15, 2007, at which the parties appeared as scheduled. Without objection, I admitted six exhibits offered by the government (Gx. 1 - 6). Applicant testified in his own behalf, and offered seven exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - G. He also presented two witnesses. DOHA received the transcript (Tr.) on November 29, 2007.

FINDINGS OF FACT

The government alleged in the SOR that Applicant had filed a Chapter 13 bankruptcy petition on December 2, 2002, and the petition was discharged on December 7, 2005 (SOR ¶ 1.a); and that he owed the Internal Revenue Service (IRS) a debt of approximately \$20,000, which was not fully repaid as of January 14, 2007 (SOR ¶ 1.b). In response to the SOR, Applicant admitted with explanation both allegations. His admissions are incorporated herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 44 years old and works as a computer operator for a defense contractor. He has held that job since November 2005. In October 2002, he was hired as a security guard by a different defense contractor and applied for a security clearance in 2003. However, the investigation

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

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ In a notarized statement on June 6, 2007, Applicant stated, "I do not wish to have a hearing but if a hearing is needed, I will be happy to provide any documentation or answer any questions you may deemed (sic) necessary."

⁴ Ax. A.

underlying this case is based on a request for clearance sponsored for his computer operator position in December 2005.⁵

Applicant graduated from college in 1986 with a degree in agriculture business. From September 1987 until March 1999, he worked as a nuclear electrician for a U.S. Navy shipyard. Applicant and his wife were married in August 1986 and have two teenage children. They separated in December 2006 and a divorce is pending.⁶ While Applicant worked at the shipyard, his wife worked as a Department of the Navy employee at a Space and Naval Warfare (SPAWAR) command. In 1998, they were told her job would be relocated to another state. Applicant decided to leave his shipyard job and move his family to accommodate his wife's change of location, but he was also told he would be given assistance to find another Navy job at their new residence. Applicant received little or no help in his job search, and had to take a job paying half what he was making before the move.⁷

Applicant and his wife had bought a house at their previous location in 1995. They used a loan from his 401k retirement account for the down payment and costs of the purchase. When they moved in 1998, they lost significant income and had to incur the costs of their move. As a result, he was unable to repay the 401k loan and the remainder of those proceeds were declared as income for which he had to pay taxes for the 1998 and 1999 tax years. He did not have the money to pay those taxes.⁸

Applicant's relocation resulted in extensive costs incurred through the actual move and through the fact their house did not sell before they moved. At their new location, Applicant and his wife were paying their previous mortgage and paying rent, but had only her full time income.⁹ It was not until March 1999 that Applicant found full-time work as an electrician. By that time, Applicant and his wife had fallen behind on their bills. In addition to over use of their credit cards, they each claimed the same exemptions from tax withholding to maximize their take home pay. They filed their tax returns as required each year, but found they owed taxes in addition to what had been deducted from their pay. Their taxes for from tax years 1998 through 2006 went unpaid. Applicant's wife had set up a \$200 monthly payroll allotment to pay their back taxes, but it was cancelled by her employer without explanation.¹⁰

In 1993, Applicant's wife's youngest sister died. They paid for her funeral and helped support the sister's 11-year-old daughter until she graduated from high school. Additionally, unbeknownst to Applicant, around the time they had to relocate, his wife started financially supporting her mother,

⁵ Gx. 1.

⁶ Tr., 68.

⁷ Answer; Ax. A.

⁸ *Id.*

⁹ Tr., 54.

¹⁰ Tr., 58 - 60.

who had become disabled. Applicant's wife paid for her mother's food, utilities, transportation, and medical bills. She also made a down payment on a new trailer for her mother.¹¹

On December 3, 2002, Applicant and his wife filed a Chapter 13 bankruptcy petition. Through that action, they entered into a repayment plan whereby they paid \$1,252 each month for three years and were able to satisfy all their dischargeable debts. However, their past due taxes could not be discharged through bankruptcy. On completion of the payment plan in 2005, Applicant and his wife owed a tax bill that had grown to about \$29,464 with interest and penalties. After an offer in compromise was rejected by the IRS in 2006, Applicant withdrew funds from his retirement savings and paid off the debt in March 2007.¹²

Applicant did not change the number of his claimed exemptions from withholdings until this year. As a result, he and his wife are each paying half of an \$8,000 tax bill from the 2006 tax year.¹³

Applicant works 40 hours weekly at his primary job as a computer operator. He also works nearly as many hours at his other job as a security guard. He requires a security clearance for both jobs. His supervisor at the security guard job regards Applicant as a superb worker, who is extremely reliable and trustworthy. Several friends and co-workers echoed his supervisor's opinion of Applicant.¹⁴

POLICIES AND BURDEN OF PROOF

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines.¹⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines.¹⁶ 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. In this case, the pleadings and the information presented by the parties at

¹¹ Tr., 53 - 54.

¹² Answer; Ax. A; Ax. B.

¹³ Tr., 59 - 60, 77.

¹⁴ Tr., 47 - 53; Ax. C.

¹⁵ Directive. 6.3.

¹⁶ Commonly referred to as the "whole person" concept, these 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.

hearing require consideration of the security concerns and adjudicative factors addressed in Revised Adjudicative Guideline F (financial considerations).

_____ A security clearance decision is intended to resolve whether it is clearly consistent with the national interest¹⁷ 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.¹⁸ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, 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.¹⁹

CONCLUSIONS

Financial Consideration. Under Guideline F, "[f]ailure 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."²⁰ The government presented sufficient information to support the allegations in the SOR. Available information shows Applicant still owes about \$4,000 in taxes from 2006 after having resolved nearly \$30,000 in unpaid taxes, interest and penalties. He and his wife also resolved their debts through a Chapter 13 petition, whereby they resolved their dischargeable obligations through a 36-month repayment plan. The record requires consideration of Guideline F disqualifying conditions 19(a),²¹ 19(c),²² and 19(e).²³

¹⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁸ See *Egan*, 484 U.S. at 528, 531.

¹⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

²⁰ Revised Adjudicative Guidelines, ¶ 18.

²¹ "a history of not meeting financial obligations;"

²² "inability or unwillingness to satisfy debts;"

²³ "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;"

The record also requires consideration of Guideline F mitigating conditions 20(b)²⁴ and 20(c).²⁵ Applicant's loss of income was due to his wife's job being relocated. The associated costs could not be controlled, and his wife's decision to financially support her mother further stressed their finances. To compound matters, their claimed exemptions left them with taxes they could not pay, and Applicant's use of his retirement savings caused further tax liabilities. Although bankruptcy is not a desirable means (as opposed to full payment) of resolving one's debts, Chapter 13 provides the debtor a way of at least partially satisfying his obligations. Applicant and his wife chose this route and repaid more than \$45,000 through their petition. Additionally, Applicant used nearly \$30,000 of his retirement savings to pay outright his tax debts through 2005. He is now paying a remaining tax debt of about \$4,000, and has adjusted his withholdings so enough taxes will be taken from his pay up front.

The presence or absence of delinquent debts does not end the inquiry into whether one's financial problems present an unacceptable security risk. The issue is whether Applicant's unpaid debts put him at risk of engaging in illegal acts to generate funds to pay his debts, or whether his financial problems reflect adversely on his judgment, reliability, self-control, or willingness to follow rules and regulations. Applicant has not tried to evade his responsibility in this matter, and he continues to work two full-time jobs to ensure he has enough money to resolve his financial problems and support his family. On balance, I conclude he has mitigated the security concerns about his finances.

Whole Person. I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in Section 2(a) of the Revised Adjudicative Guidelines.²⁶ Applicant did not invite the facts and circumstances about which the government is concerned. Nonetheless, rehabilitation and positive changes in his financial condition are evident. He made necessary financial adjustments, took action to repay his debts as soon as he could, and no longer is subject to his wife's unreasonable use of their income for the benefit of others. He continues to work two jobs to support his family and ensure he has sufficient income to avoid such problems in the future. A fair and commonsense assessment²⁷ of all available information, particularly the facts bearing on the underlying causes of his financial problems and his response thereto, shows that the Applicant's finances do not present an unacceptable risk should he be granted access to classified information.

²⁴ "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;"

²⁵ " 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;*" (emphasis added)

²⁶ See footnote 16, *supra*.

²⁷ See footnote 15, *supra*.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial Considerations): FOR THE APPLICANT
Subparagraph 1.a and 1.b: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone
Administrative Judge