



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 07-00411
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Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

May 22, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant has failed to mitigate the security concerns raised by the government’s information about his finances and personal conduct. Accordingly, his request for a security clearance is denied.

On April 16, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance for his 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 grant Applicant’s request.

On July 26, 2007, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision – security concerns addressed in the Directive

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

under Guideline E (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct) of the Revised Adjudicative Guidelines (AG).² More specifically, the government alleged that in 1995 Applicant was charged and convicted of driving while intoxicated (DWI) (SOR ¶ 1.a), and that there are two active warrants for his arrest issued in 1999 (SOR ¶ 1.b) and 2000 (SOR ¶ 1.c). It was also alleged Applicant owed \$22,717 for 11 delinquent debts (SOR ¶¶ 2.a - 2.k), and that he deliberately falsified his e-QIP by answering “no” to questions in section 23 (regarding any arrests for drug or alcohol-related offenses) and to questions in section 28 (regarding debts greater than 180 days past due in the preceding seven years).

On September 12, 2007, Applicant answered the SOR and admitted the allegations of criminal conduct in SOR ¶ 1, and denied all of the allegations of indebtedness in SOR 2. In his response to the allegations in SOR ¶ 3 that he falsified his e-QIP answers, he uses the phrase “I admit;” however, it appears he is addressing not the issue of falsification but the underlying conduct or facts. Accordingly, his responses to SOR ¶¶ 3.a and 3.b are entered as denials.

On January 31, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM)³ in support of the government’s preliminary decision. Applicant received the FORM on February 6, 2008, and was given 30 days to file a response to the FORM. He submitted nothing before the deadline, and the case was assigned to me on May 2, 2008.

Findings of Fact

Applicant’s admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant’s response to the SOR, and the exhibits contained in the government’s FORM, I make the following additional findings of fact.

Applicant is 49 years old and seeks a security clearance for his employment with a defense contractor, where he has worked as a security guard since November 2005. According to his response to e-QIP question 26, Applicant was investigated for and/or received a secret-level security clearance in about August 1985. He attended college from 1976 until 1979, and is a twice-married father of three children, ages 24, 18, and 13. His first marriage began in March 1981 and ended by divorce in July 2001. His second marriage began in October 2001. As of June 2005, he was separated from his wife. (FORM, Item 4) In response to the SOR (Item 2) and to DOHA interrogatories (Item 8), referred to a pending divorce, but provided no dates or other details.

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 See Directive, Enclosure 3, Section E3.1.7. The FORM included 11 documents (Items 1 - 11) proffered in support of the government’s case.

After Applicant submitted his e-QIP in April 2006, Office of Personnel Management (OPM) investigators obtained a report of his credit history as of April 25, 2006 (FORM, Item 5). That report showed Applicant owed approximately \$22,390 for ten delinquent debts (SOR ¶¶ 2.a - 2.k). All but one of the debts listed in Item 5 were individual debts for which Applicant alone is responsible. A car repossession from 2006 resulted from non-payment on a joint car loan, presumably taken out with one of his wives. (SOR ¶ 2.k) The credit report also showed Applicant's home mortgage of \$111,370 was foreclosed in January 2005. There is no available information showing that any of Applicant's delinquent debts have been paid or otherwise resolved.

In April 1995, Applicant was arrested, charged, and convicted of DWI (SOR ¶ 1.a). He was sentenced to 60 days in jail, of which 53 days was suspended. He also was assessed fines and court costs of \$1,800, his driver's license was suspended for one year, and was ordered to attend Alcoholics Anonymous (AA) meetings for one year. (FORM, Items 2 and 8)

As of May 2007, there were at least two active warrants for Applicant's arrest. For "failure to pay" (SOR ¶ 1.b) and "failure to answer" (SOR ¶ 1.c). (FORM, Item 9) In his response to DOHA interrogatories in May 2007, he claimed he was unaware of the warrants. Applicant indicated in response to the SOR that both warrants "should be taken care of on Sept. 20, 07 (sic)." However, the record contains no information to support or even explain the charges, and Applicant has submitted no further information showing the warrants have been resolved.

When Applicant submitted his e-QIP (FORM, Item 4), he answered "no" to all of the questions in section 23 (record of arrests) (SOR ¶ 3.a). In response to DOHA interrogatories asking why he omitted his 1995 DWI arrest and conviction from the e-QIP, Applicant stated he thought that arrest was no longer on his record. Applicant also answered "no" to e-QIP section 27 (financial record in the preceding seven years) and section 28 (debts greater than 90 or 180 days past due) (SOR ¶ 3.b). In response to DOHA interrogatories which asked why he omitted his debts and repossessions from the e-QIP, he blamed his ex-wife for the debts, and cited his pending divorce for his assertion he did not know about the debts when he completed the form. (FORM, Item 8)

Policies

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 (AG).⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, these factor are:

⁴ 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. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline E (personal conduct) at AG ¶ 15, Guideline F (financial considerations) at AG ¶ 18, and Guideline J (criminal conduct) at AG ¶ 30.

A security clearance decision is intended 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. Therefore, the government 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.⁷

Analysis

Criminal Conduct.

Applicant's criminal conduct may be a security concern because, as stated in AG ¶ 30,

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

[c]riminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Available information is sufficient to support the allegations that he engaged in criminal conduct in April 1995 when he was arrested and convicted for DWI. However, the information in support of the allegations that as of May 2007 there were two outstanding warrants for his arrest on charges of failure to answer and failure to pay is insufficient to prove criminal conduct. Nonetheless, his 1995 offense and the presence of the arrest warrants require application of the disqualifying conditions at AG ¶ 31(a) (a single serious crime or multiple lesser offenses) and AG ¶ 31(c) (*allegation* or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted) (emphasis added).

By contrast, because the lone provable offense occurred more than 12 years ago, Applicant is entitled to mitigation under AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened*, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment) (emphasis added) The gravamen of this case is in the security concerns about Applicant's finances and truthfulness, as discussed below. The security concerns presented by his criminal conduct are mitigated.

Financial Considerations.

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

[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.

Applicant has denied all of the SOR allegations about his past due debts, relying on his assertion that his ex-wife is somehow responsible for the debts. However, the information presented by the OPM credit report is sufficient to support the SOR allegations. The same credit report also shows that all but one of the debts listed in the SOR is an individual account in his name alone. In response, Applicant has not presented any reliable information to show he has a reasonable basis for disputing his debts or they are otherwise not his responsibility. Nor is there any available information to show he has acted to repay or otherwise resolve his debts. Accordingly, the record supports application of the disqualifying conditions listed in AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). Likewise, there is no support for any of the mitigating conditions listed at AG ¶ 20. I conclude Applicant has not met his burden of producing information that would mitigate the security concerns raised by the government's information about his finances.

Personal Conduct.

As stated in AG ¶ 15, “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.”

The Applicant denied the allegations he intentionally omitted from the e-QIP his 1995 DWI and his past due debts. As to his DWI, he explained that he thought his DWI was no longer on his record, thus implying he thought he did not have to list it. Under some circumstances and with additional corroborating information, such an explanation might support a conclusion that his omission was unintentional. However, that omission can not be viewed in isolation. It must be evaluated along with his omission of adverse information about his finances. Applicant claims his ex-wife is to blame for his delinquencies and that he was unaware he had such debts. Without more, his explanation is not plausible.

All of the available information probative of this issue leads me to conclude Applicant knowingly gave false answers in his SF 86 and that he was trying to mislead the government about adverse information in his background. The foregoing requires application of the disqualifying condition at AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

The government satisfied its burden of producing sufficient reliable evidence to support SOR ¶¶ 3.a and 3.b. In response, Applicant has submitted no information that would support application of any of the mitigating conditions under this guideline. Accordingly, he has not mitigated the security concerns about his personal conduct.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E, F, and J. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Aside from information about his age, education, and employment history contained in his SF 86, there is nothing on which to base application of any of these factors. Applicant is 49 years old and must be presumed to be a mature adult. However, there is no available information about his circumstances that would support application of any of the remaining whole person factors. A fair and commonsense assessment⁸ of all of available information bearing on Applicant's finances and candor shows there are doubts about his ability or willingness to protect the government's interests. Because

⁸ See footnote 5, supra.

the protection of the national interest is paramount in these determinations, these doubts must be resolved in favor of the national interest.⁹

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, Criminal Conduct	FOR APPLICANT
Subparagraphs 1.a - 1.c	For Applicant
Paragraph 2, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 2.a - 2.k:	Against Applicant
Paragraph 3, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 3.a - 3.b:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MATTHEW E. MALONE
Administrative Judge

⁹ See footnote 8, *supra*.