



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 06-19990
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

February 12, 2008

Decision

MALONE, Matthew E., Administrative Judge:

On May 26, 2004, Applicant submitted a Security Clearance Application (SF 86) 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 August 28, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations) and Guideline E (personal conduct).

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.

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on November 13, 2007, and I scheduled a hearing to be held on December 11, 2007. The parties appeared as scheduled. The government presented seven exhibits (Gx. 1 - 7). Applicant testified in his own behalf. DOHA received the transcript (Tr.) on December 19, 2007. I left the record open until December 21, 2007, to allow Applicant to make a post-hearing submission (Tr., 96 - 97); however, nothing further was submitted. Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's request for a security clearance is denied.

Findings of Fact

Under Guideline F, the government alleged in SOR ¶ 1.a that Applicant had filed for Chapter 13 bankruptcy protection on May 20, 2003; that the petition was converted to a Chapter 7 filing on January 7, 2005; and that the Chapter 7 case was dismissed on February 7, 2005. The government further alleged in SOR ¶¶ 1.b through 1.n that, between February 2002 and June 2005, he owed about \$30,000 in delinquent accounts that have been charged off as business losses, referred to collection agencies, or enforced through judgments and garnishments. Applicant denied these allegations, but also asserted that the debts in SOR ¶¶ 1.b and 1.c have been paid by wage garnishments.

During cross-examination of the Applicant, Department Counsel moved to amend the SOR to conform to the information produced at hearing.³ Applicant did not object and I granted the motion. (Tr., 52 - 54, 79 - 80) Accordingly, I amended the SOR to add a new allegation as SOR ¶ 1.o the following:

You are indebted to Greentree/Eastrock Financial in the approximate amount of \$38,614 for a second home mortgage. You did not make payments on that second mortgage for approximately two years. Your second mortgage was foreclosed on in August 2007.

Applicant admitted the allegation. (Tr., 80)

Under Guideline E, the government alleged in SOR ¶ 2.a that Applicant deliberately falsified his response to DOHA interrogatories in November 2006 by asserting his Chapter 7 bankruptcy was discharged, and by providing a document in support of his response, when he knew the case had, in fact, been dismissed. In SOR 2.b, the government alleged Applicant deliberately falsified his response to a second set of DOHA interrogatories in February 2007 when he again asserted his bankruptcy had been discharged, and again provided a document in support of his response. Applicant denied both allegations, asserting he thought "discharged" and "dismissed" meant the same thing in bankruptcy. After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

³ Authorized by the Directive, at E3.1.17.

Applicant is 42 years old and, since April 2004, has worked for a defense contractor as a senior designer. He generates, modifies, and maintains shipboard systems drawings and blueprints using computer-aided drawing (CAD) at a shipyard. He also served in the U.S. Navy Reserve from 1984 until 1995, achieving the rank of petty officer second class (paygrade E-5). Applicant has held a security clearance either through his civilian work or through his military service since about 1984.

Applicant has been married since 1997, and has two children, ages 14 and 12. A previous marriage ended in divorce in 1997 after ten years. He has two children from that marriage, ages 19 and 16, for whom he was ordered to pay monthly support as a term of the divorce decree. At one point, his pay was garnished to satisfy a \$1,192 arrearage. That debt (SOR ¶ 1.c) was satisfied by 1999, before Applicant was able to buy a house. He has not been behind on his child support payments since 1999.

Applicant and his wife began experiencing financial problems in 2002, when they were both unemployed between May and September of that year. Since then there have been no periods of unemployment. Nonetheless, they accrued several delinquent debts totaling about \$30,000.

In July 2005, Applicant failed to pay \$507 on a jewelry store account, the original balance of which was about \$800. The debt was enforced through a civil judgment (SOR ¶ 1.b) and satisfied in October or November 2005. (Tr., 85 - 86; Gx. 2) The allegations in SOR ¶¶ 1.e - 1.l represent \$432 in unpaid medical bills incurred for his wife's periodic emergency room visits for a heart condition. Applicant claimed he and his wife have challenged these debts, but provided no supporting documentation. (Tr. 80 - 82)

Between 2002 and 2005, Applicant accrued three delinquent credit card accounts totaling about \$2,550 (SOR ¶¶ 1.d, 1.j, and 1.k). He also owes about \$25,370 as a result of two car repossessions (SOR ¶¶ 1.l and 1.m), and another \$766 for an unpaid early termination fee from a home security service (SOR ¶ 1.n).

In May 2003, Applicant and his wife, as joint debtors, filed for Chapter 13 bankruptcy protection. In November 2004, the Chapter 13 trustee moved to dismiss their Chapter 13 bankruptcy for failure to make payments. In January 2005, their petition was converted to a Chapter 7 liquidation bankruptcy. On February 7, 2005, Applicant's role in the joint bankruptcy petition was ended by an *Order of Dismissal for Failure to Attend Meeting of Creditors*.⁴ (SOR ¶ 1.a) On May 6, 2005, Applicant's wife received a *Discharge of One Joint Debtor*. Thereafter, the case was closed. (Gx. 4; Gx. 7)

Applicant and his wife bought a house in 1999 for \$109,000. In June 2000, they obtained a second mortgage for about \$38,000 to pay for improvements to the house. They stopped making payments on their second mortgage sometime in 2005. When their first mortgage also became delinquent in 2007, the company holding the second mortgage bought the first mortgage and foreclosed. Applicant and his family had to

⁴ The order stated that it applied to Applicant only.

move out of their house in November 2007, and he still owes \$38,614 (SOR ¶ 1.o) for non-payment of his second mortgage. (Tr., 36 - 52, 75 - 79; Gx. 5; Gx. 6)

In November 2006 and February 2007, Applicant responded to interrogatories sent to him by DOHA adjudicators. In response to questions about his finances, unpaid debts, and bankruptcy status, Applicant asserted most of his debts had been discharged through Chapter 7 bankruptcy in May 2005. In support of his claim of discharge, Applicant provided in each notarized response to interrogatories a copy of a *Discharge of One Joint Debtor*, which contained his name as the debtor whose obligations were to be liquidated. However, a comparison of the docket histories contained Gx. 2 and Gx. 7, a close examination of the document proffered by Applicant in his interrogatory responses, and acceptance of the common sense notion that it makes no sense for the courts to issue a separate discharge for each joint debtor, all lead to one conclusion – Applicant altered the document he submitted by substituting his name where his wife’s had been on the authentic discharge order. (SOR ¶¶ 2.a and 2.b) Applicant insists the document is as he received it from the court. He also has implied his wife, who notarized his signature on his answer to the SOR and on his second response to interrogatories, may have had something to do with how the document appears. (Tr. 93 - 96)

After expenses each month, Applicant estimates he has about \$1,000 left over from the \$3,700 net monthly income he and his wife bring home. However, the expenses he is paying do not include any payments to the debts listed in the SOR. (Tr., 85 - 90)

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).⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines.⁶ 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 F (financial considerations), at AG ¶ 18, and Guideline E (personal conduct) at AG ¶ 15.

⁵ Directive. 6.3.

⁶ Commonly referred to as the “whole person” concept, these factor 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.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁷ 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.⁸ 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.⁹

Analysis

Financial Considerations.

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." (AG ¶ 18) The government presented sufficient information to support the allegations of a failed bankruptcy petition in 2005 (SOR 1.a), and multiple delinquent debts totaling more than \$30,000 (SOR 1.b - 1.n). The government also supported its allegation in SOR ¶ 1.o that Applicant owes more than \$38,000 after his mortgage was foreclosed last year. While the information presented supports Applicant's contentions that the debts in SOR 1.b and 1.c have been paid, available information shows Applicant has had significant debts since 2002, that he is unwilling to pay or resolve through other means, such as bankruptcy. Accordingly, the record requires consideration of AG ¶¶ 19(a) (*a history of not meeting financial obligations*) and 19(c) (*inability or unwillingness to satisfy debts*).

By contrast, the record does not support consideration of any of the Guideline F mitigating conditions listed at AG 20. His 2007 mortgage foreclosure precludes a finding his financial problems are not recent, and he presented no information to show his debts will not recur or do not reflect adversely on his suitability for access to classified information. (AG 21(a)) Applicant claims his financial problems stemmed from periods of

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

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

unemployment, but those events occurred five years ago, and Applicant has not acted responsibly to manage his finances. (AG 21(b)) For example, he had an opportunity to have his debts discharged in bankruptcy but lost that opportunity by failing to participate in the process as required. Further, he has not acted in good faith to pay or otherwise resolve his debts (AG 21(d), and he has not sought help for his financial problems from a credit counseling service or other appropriate entity (AG 21(c)). On balance, Applicant has failed to mitigate the security concerns raised by the government's information.

Personal Conduct.

The security concern about Applicant's personal conduct, as expressed in AG ¶ 15, is that "[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." The government's information supports the SOR ¶¶ 2.a and 2.b allegations that Applicant deliberately falsified his responses to government questions about his finances. Applicant deliberately and unabashedly tried to mislead and deceive the government when he claimed his debts had been discharged in bankruptcy and when he provided altered documents in support of his false statements. Applicant's conduct falls squarely within AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*), and is directly contrary to the basic tenets of the industrial security program, which relies on the candor and integrity of persons to whom access is granted. Even allowing for the possibility his wife was involved in altering the document, Applicant is responsible for the statements and representations he makes to the government.

I have also reviewed the mitigating conditions listed in AG ¶ 17. The record does not warrant consideration of any of them. Accordingly, Applicant has failed to mitigate the security concerns about his personal conduct.

Whole Person Concept.

I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guidelines F and E. I have also reviewed the record before me in the context of the whole person factors listed in ¶ AG 2(a).¹⁰ Applicant is 42 years old and responsible for supporting his wife and children. Apart from a brief period five years ago, he has been gainfully employed. However, the seriousness of his conduct cannot be overstated. Nor is there any information to suggest he is rehabilitated and unlikely to engage in such falsifications in the future, as he persisted in his denials of falsification at hearing. As for his finances, Applicant has not shown he has any inclination to properly manage his money. Significant doubts persist about whether Applicant is suitable for continued access to classified

¹⁰ See footnote 6, *supra*.

information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the national interest.¹¹

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.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

¹¹ See footnote 9, *supra*.