



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-07474

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

June 19, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant has mitigated the security concerns raised by the government's information about his finances. Accordingly, his request for a security clearance is granted.

On September 18, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request renewal of a security clearance he was first granted in 1990 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 December 19, 2007, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision – security concerns addressed in the Directive under Guideline F (financial considerations) of the Revised Adjudicative

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

Guidelines (AG).² More specifically, the government alleged that Applicant owed approximately \$70,192 to five creditors for delinquent accounts that were either charged off as business losses (SOR ¶¶ 1.b and 1.e) or placed for collection (SOR ¶¶ 1.a and 1.d). Another debt (SOR ¶ 1.c) was allegedly cancelled, resulting in a corresponding benefit taxable as income.

On February 14, 2008, Applicant answered the SOR and admitted with explanation all of the SOR allegations. He also requested a decision without a hearing. On March 7, 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 March 17, 2008, and was given 30 days to file a response to the FORM. His May 20, 2008, response to the FORM was included in the record without objection. The case was assigned to me on June 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, the FORM and Applicant's response thereto, I make the following additional findings of fact.

Applicant is 70 years old. Since September 2003, he has worked for a defense contractor as a senior consulting field engineer. Between May 1989 and June 2003, he worked as an engineer or a designer for two marine industry engineering firms. Before that, he worked for 33 years as a draftsman in the shipbuilding division of a major industrial corporation, and served in the Army National Guard from 1956 until 1966. He acquired a secret clearance in 1990. Applicant and his wife have two adult children and have been married for 50 years. They have lived in the same house for 31 years (FORM, Item 4), and as of March 2008, they were "mortgage free." (FORM, Item 7)

In the early 1990s, Applicant began experiencing financial difficulties due to "using his credit cards liberally." (FORM, Item 7) When he submitted his most recent application for a security clearance in 2006, he disclosed two delinquent credit card accounts totaling nearly \$30,000. (FORM, Item 4) Available information (FORM, Items 3, 5 - 8) shows that, as of August 2007, he owed the following debts:

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 eight documents (Items 1 - 8) proffered in support of the government's case. Items 5 and 8 are credit history reports obtained by DOHA adjudicators rather than by "an *investigative* agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Department or Agency head concerned, to safeguard classified information within industry under E.O. 10865..." (Directive, E3.1.20; emphasis added) However, absent objection by the Applicant, the credit histories are admitted and have been considered as part of the basis for my decision.

- \$38,720 to a collection agency for a delinquent MBNA credit card account, as alleged in SOR ¶ 1.a.
- \$1,442 to a collection agency for a delinquent Cap 1 Bank credit card account, as alleged in SOR ¶ 1.b.
- \$4,483 to a collection agency for a delinquent CCB Credit Services credit card account, as alleged in SOR ¶ 1.d.
- \$17,652 to a collection agency for a delinquent Chase credit card account, as alleged in SOR ¶ 1.e.

Applicant also owed a \$7,895 debt for another delinquent Chase credit card. However, the debt was cancelled in October 2006, resulting in a taxable benefit to Applicant for that tax year.

Applicant has been working to repay or otherwise resolve his debts since early 2007. (FORM, Items 3 and 6) After initially challenging the debt in SOR ¶ 1.a, Applicant negotiated a settlement whereby he would pay only the principal amount owed and the interest and fees. He has since paid this debt. (Response to FORM; FORM, Item 6). He has also made arrangements to repay the debts in SOR ¶¶ 1.b, 1.d, and 1.e.

Applicant owns real estate worth about \$320,000. He and his wife have retirement savings accounts worth about \$280,000. Applicant also has investments worth about \$75,000 and a company savings plan worth about \$35,000. Finally, he has a positive monthly cash flow of about \$5,000 after expenses. (FOR, Item 7)

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:

- (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.

⁴ Directive. 6.3.

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.

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. 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

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.

As to the debt alleged in SOR ¶ 1.c, even though the debt was cancelled, the fact he had to declare as income the benefit of the cancellation supports the fact this was his obligation to pay one way or another. Because he still owes about 45% of the total debt alleged in the SOR, and because all of the alleged debts went unaddressed for several

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).

years, 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) apply.

The government satisfied its burden of producing sufficient reliable evidence to support the SOR. His debts resulted from irresponsible use of his credit cards. However, the disqualifying condition at AG ¶ 19(b) (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt) does not apply because he is paying his debts and it is realistic, given his assets and the actions he has already taken, to expect he will repay the debts in the near future. Further, the information submitted by both Applicant and the government shows the mitigating condition at AG ¶ 20(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*) (emphasis added) applies.

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 debt puts him at risk of engaging in illegal acts to generate funds to pay his debt, or whether his financial problems reflect adversely on his judgment, reliability, self-control, or willingness to follow rules and regulations. Applicant has taken action to resolve his debts, is likely to continue those actions, and has a long history of steady employment and significant financial resources available to him. The totality of available information about his finances leads me to conclude the security concerns related thereto are mitigated.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 70 years old and presumed to be a mature, responsible adult. Everything about his background suggests stability and reliability – 50 years of marriage to the same person, more than 30 years in the same house, and more than 30 years in the same job. His financial problems have arisen relatively recently, but are being addressed in a responsible manner. He has the assets and stream of income needed to resolve his debts, and it is unlikely that he will again incur such delinquencies in the future. On balance, despite the fact he still owes a good deal of the total debt alleged, these facts and circumstances do not present the potential for pressure, coercion, exploitation, or duress. A fair and commonsense assessment⁸ of the available information bearing on Applicant's finances shows he has satisfied the doubts about his ability or willingness to protect the government's interests.

⁸ See footnote 4, *supra*.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a - 1.e: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge