



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 07-11370
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Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro Se*

April 7, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's request for a security clearance is denied.

On October 1, 2003, 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 October 28, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns

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

addressed in the Revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to an administrative judge on December 10, 2007. On December 17, 2007, the case was re-assigned to me, and I scheduled a hearing to be held on January 24, 2008. The parties appeared as scheduled. The government presented four exhibits (Gx. 1 - 4). Applicant testified in his own behalf and submitted two exhibits (Ax. A and B). DOHA received the transcript (Tr.) on February 1, 2008.

Procedural Issues

Applicant did not receive DOHA's Notice of Hearing, which is dated January 9, 2008, until January 14, 2008, less than 15 days before the hearing date. At the hearing, he waived the right to 15 days of advance notice provided by Section E3.1.8 of Enclosure 3 to the Directive. (Tr. 5 - 8)

Findings of Fact

The government alleged in SOR ¶¶ 1.a - 1.n that Applicant was delinquent on 14 debts totaling \$40,121.99. Applicant responded to the SOR on November 12, 2007, admitted all of the SOR allegations and requested a hearing. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 38 years old. Aside from a four-month lay-off in 2005,³ he has been employed as a security guard by a defense contractor since May 2003. He has been steadily employed in a variety of jobs since at least August 1987. (Gx. 1)

Applicant has been married twice. His first marriage started in October 1992 and ended in divorce in March 1997. He and his current wife were married in May 1998. They have two children, ages 9 and 6.

Applicant attributes most of his financial problems to his current wife's failure to properly attend to the family finances. He testified she suffered from postpartum depression after the birth of their younger child in 2001. This caused her to completely disregard their bills and other financial obligations. (Tr. 39 - 40) He further testified that, in February 2003, his wife refinanced their mobile home by forging his signature on the loan documents. Because he disagreed with the decision to extend the period of the loan from 15 years to 30 years, he allowed the trailer to be repossessed and now owes approximately \$23,136 on the balance after resale. (SOR ¶ 1.a; Tr. 40 - 46, 84; Gx. 3;

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 This may account for the delay in completing the investigation / adjudication of his application for clearance.

Gx. 4) Applicant also blames his wife's postpartum depression for the repossession of their car in December 2003. He still owes approximately \$5,867 after the resale of that car. (SOR ¶ 1.b; Gx. 1; Tr. 47 - 48)

Applicant has had two vehicles repossessed and his pay has been garnished to repay delinquent debts. (Gx. 1) In 2003, he discovered \$500 in his bank account to which he knew he was not entitled, as the bank had made an error in his favor. Nonetheless, he withdrew the money (Tr. 51 - 53) and the bank has obtained a civil judgment against him for \$525. This is one of at least five judgments totaling approximately \$4,756 against him for delinquent debts (SOR 1.c - 1.g; Gx. 2 - 4).

Applicant also owes approximately \$6,270 for six other accounts that are past due and / or placed for collection. (SOR ¶¶ 1.h, 1.j - 1.n) The debt listed at SOR ¶ 1.l is a duplicate of the debt listed at SOR ¶ 1.j. Three of the debts he owes are for less than \$100 each and have been unpaid for up to 10 years. He has not paid or otherwise resolved any of the debts listed in the SOR.

During his background investigation, Applicant was interviewed in November 2006 by a government investigator, who suggested Applicant take action to resolve his past due debts. (Tr. 80 - 81) In 2003, Applicant consulted a bankruptcy attorney about filing for Chapter 7 liquidation of his debts, but he never followed through. Applicant blamed his failure to file on the attorney's lack of attention to his case, but averred he will file a Chapter 7 petition soon. (Tr. 79, 81, 97)

Applicant's supervisors at work are pleased with his performance there. They consider him to be an asset to their company and do not feel he is a security risk. However, the letters they submitted in support of his request for a clearance do not express any knowledge of the factual matters at issue in his case. (Ax. B and C)

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

⁴ Directive. 6.3.

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 F (financial considerations) at AG ¶ 18.

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. 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.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.

The government presented sufficient information to support the allegations in SOR ¶¶ 1.a - 1.h and 1.j - 1.n that Applicant owes in excess of \$40,000 in delinquent

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).

debts. The record further supports a conclusion his debts resulted from and are perpetuated by his deliberate neglect of his finances dating as far back as 1998, and that he has taken no action to pay even the smallest of his debts. The record also reflects one instance of financial (and possibly criminal) misconduct stemming from his withdrawal of funds from his account to which he knew he was not entitled. The facts established by the government's exhibits and Applicant's admissions and testimony require application of the disqualifying conditions listed at AG ¶ 19(a) (inability or unwillingness to satisfy debts), at AG ¶ 19(c) (a history of not meeting financial obligations), and at AG ¶ 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust).

In response to the government's information, Applicant has attempted to place the blame for his financial problems on his wife's postpartum depression. However, he provided no information documenting her condition nor did he indicate how long her condition lasted. His assertion that depression following the birth of their youngest child in 2001 affected her ability or willingness to pay bills does not explain her decision in 2003 to refinance their home to reduce their monthly payment. Indeed, his claim that his wife forged his signature on the refinancing documents is itself not plausible. If that were the case, the lender would have been easily persuaded to void the deal rather than be a party to a fraudulent transaction.

Even assuming his wife's decisions contributed to their debt problems, Applicant has completely abdicated his responsibility in these matters. It is not unusual for a person to rely on their spouse to pay the bills and manage the household finances. However, when a problem arises and is brought to the other partner's attention, he should not be allowed to escape responsibility by using their arrangement as an excuse. Applicant has known about the debts in question for several years yet has done nothing to resolve them. Indeed, he has failed to pay even those debts less than \$100, some of which were incurred around the time his first marriage ended and which he has been able to pay all along.

Applicant provided no credible information on which to base application of any of the mitigating conditions listed in AG ¶ 20. Accordingly, he has failed to mitigate the security concerns about his finances.

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 38 years old and has been gainfully employed for most of his adult life. His work record is satisfactory and, aside from his finances, there is no adverse information about other facets of his life. However, available information suggests he has been willfully irresponsible when it comes to his finances. Nor has he presented any information that would satisfy the government that his financial matters will be resolved anytime soon and that he will not continue to ignore his responsibilities in this regard.

The facts and circumstances of Applicant's finances present an unacceptable risk to the national interest were he to be granted access to classified information. A fair and commonsense assessment⁸ of all available information bearing on Applicant's finances shows there are still doubts about his ability or willingness to protect the government's interests as his own. Because protection of the national interest is paramount in these determinations, such 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a - 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j - 1.n:	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

⁸ See footnote 4, *supra*.

⁹ See footnote 7, *supra*.