



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-11576
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)	
Applicant for Security Clearance)	

Appearances

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

January 29, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, the government’s exhibits (Gx.), Applicant’s exhibits (Ax.), and Applicant’s testimony, his request for a security clearance is denied.

On August 30, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor, where he works as a security guard. 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 allow Applicant access to classified information. On July 23, 2008, DOHA issued to Applicant a Statement of Reasons

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

(SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing.³ The case was assigned an administrative judge on October 2, 2008, but was transferred to me on October 15, 2008. I convened a hearing on November 18, 2008. The parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 5)⁴. Applicant appeared and testified in his own behalf. I left the record open after the hearing to receive additional relevant information. DOHA received the transcript of hearing (Tr.) on November 26, 2008. On December 1, 2008, I received a post-hearing submission, which is included in the record without objection as Ax. A.⁵

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$18,401 for four delinquent debts (SOR ¶¶ 1.a - 1.d); that he received approximately \$10,000 for damages from a car accident in 2002, but failed to use the money to satisfy his medical debts (SOR ¶ 1.e); and that in 2005, he failed to use any of the \$25,000 he received from the sale of a house he inherited to pay any of his delinquent debts (SOR ¶ 1.f). Applicant denied SOR 1.b, but admitted the remaining allegations. In addition to the facts entered through Applicant's admissions, I have made the following findings of relevant fact.

Applicant is 30 years old and has been employed by a defense contractor as a security guard since May 2006. Applicant generally has been steadily employed since 1999. (Gx. 1) He has done well in his current position and his supervisor recommends him for a security clearance. (Ax. A)

Applicant and his wife are currently separated. They were married in November 2003. Applicant has sole custody of their three-year-old child but has not filed for divorce due to the costs involved. Applicant's wife has worked outside the home for most of their marriage, but has kept her finances separate from his. She has refused to contribute to the household finances or to help repay Applicant's past due debts. At one

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.

³ As reflected on his Answer to the SOR, Applicant initially requested a determination without a hearing. However, co-workers advised him he should ask for a hearing. Department Counsel agreed to his request. (Tr. 8 - 10)

⁴ As provided for by section E3.1.10, I excluded Gx. 4 and 5 because they did not meet the authentication requirements of Directive Enclosure 3, ¶ E3.1.20. (Tr. 28 - 33)

⁵ Ax. A includes 31 pages of handwritten budget information Applicant brought to the hearing with him. Because they were original working documents of which Applicant had not made copies to leave with me, I allowed him to submit post-hearing the faxed copies along with other relevant information. (Tr. 34 - 40)

point in the past year, Applicant had to obtain a loan to bring his utility bills current. Applicant also testified she has been unfaithful and that she does not seem interested in seeing her child. (Gx. 2; Tr. 52 - 53, 61, 66)

In June 2001, Applicant voluntarily turned in the vehicle he had bought several months before because he no longer could afford the monthly payments. He had previously been in a single-car accident and his insurance covered the repairs. However, because his monthly premiums doubled after the accident, he was unable to keep the vehicle. When he returned the vehicle, he completed paperwork that showed he still owed \$9,815 for the balance of the financing agreement. This debt was listed in SOR ¶ 1.a. As of the hearing, he was to begin repaying this debt in December 2008 at a rate of \$100 each month. (Ax. A; Gx. 2; Tr.42, 47 - 48, 78)

In December 2001, Applicant was riding in a friend's car when it was involved in an accident. Applicant sustained injuries which required hospitalization. He incurred two debts for medical services of \$938 (SOR ¶ 1.c) and \$5,962 (SOR ¶ 1.d). Not long after he received the bills for his medical care, he received \$10,000 from his friend's insurance company. However, as alleged in SOR ¶ 1.e, rather than pay his medical bills and try to pay down the deficiency owed, he used the money to help buy his wife a new truck, pay for a vacation, and help his parents with some of their needs. Applicant was just trying to make his wife happy. (Gx. 2; Tr. 44)

In 2005, Applicant bought his wife a \$2,000 ring on credit with the jewelry store. He paid about \$100 each month for about four months until his wife decided she wanted a new car. He financed a car purchase for which he was obligated to pay about \$390 each month. He could not afford both and, as alleged in SOR ¶ 1.b, defaulted on the jewelry store account. (Gx. 2; Tr. 41)

In 2004, Applicant inherited his late grandfather's house, which he promptly sold. He received about \$25,000 from the sale. Aside from paying off the jewelry debt discussed above, as alleged in SOR ¶ 1.f, he did not use these proceeds to satisfy any of his past due debts. Sometime after he sold the house, he was offered a chance to settle his voluntary repossession debt for \$2,500 rather than the nearly \$10,000 he actually owed. He failed to take advantage of that offer. Instead, after he and his wife could not get financing for a new home because of his debts, Applicant again acquiesced to his wife's wishes and let her use the money to pay for things they did not need, such as a vacation. He also used some of the money to help his parents financially. (Ax. 2; Tr. 51 - 52)

Applicant has begun to manage his finances better. He and his child moved into a new less expensive residence with friends who have helped him learn how to budget his money. He has a monthly budget in place that addresses his anticipated income and expenses through January 2010. (Ax. A; Tr. 54 - 65) He has incurred no new delinquencies, but as of the hearing he had not yet begun to pay any of the debts listed in the SOR. He has not approached his other creditors to pay or resolve his past due medical debts. (Tr. 50 - 51)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those 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.

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 AG ¶ 18 (Guideline F - Financial Considerations).

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. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, 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

⁶ Directive. 6.3.

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

⁸ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the government.⁹

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 all of the allegations in SOR ¶ 1. Available information also shows Applicant accrued approximately \$18,401 for four delinquent debts between 2001 and 2005. I found credible his assertion that he has paid the jewelry debt alleged in SOR 1.b. However, it is clear he has not yet paid, resolved, or addressed in a meaningful way the debts he owes for his repossessed car (SOR ¶ 1.a) or his medical bills (SOR ¶¶ 1.c and 1.d). Further, on two separate occasions, he received large sums of money that would have resolved all of his debt. However, he chose on both occasions to spend his money in other ways. Ironically, if Applicant had resolved his debts, he and his wife may have qualified for a home in 2005. Applicant has acknowledged he did not exercise good judgment about his finances while he and his wife were together. The record in this case requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), 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*) and at AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response, Applicant has shown that the car repossession alleged in SOR ¶ 1.a arose due to his accident and subsequent insurance premium increase. It reflects well on his judgment that he returned the vehicle rather than continue to miss payments. Additionally, Applicant contends his now-estranged wife exercised a great deal of influence over their finances, which resulted in poor decision-making about their finances when he received the proceeds from the sale of his grandfather's house. Accordingly, he is entitled to some benefit from the mitigating condition at AG ¶ 20(b) (*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*) However, this mitigation is limited by the fact that he was not yet married when he mis-spent his first windfall in 2001.

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

Additionally, he established that his personal circumstances have changed so that his wife no longer is involved in his finances and he has improved his ability to manage his personal finances. The budget he presented, while rudimentary and based on the assumption he will keep working in his current job, effectively projects a positive monthly cash flow averaging \$200 while paying at least \$2,700 on the SOR ¶ 1.a debt. This information demonstrates that Applicant, now free of his wife's influence, is making sound financial decisions, is living within his means, and is intent on satisfying his past due debts. Accordingly, available information requires consideration of the mitigating conditions at AG ¶ 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) and 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*). However, this mitigation is also limited by the fact the information he has presented represents future intentions and Applicant has not yet established a track record of financial solvency sufficient to overcome his past financial circumstances. On balance, I conclude he has failed to overcome the security concerns established by the government's information.

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 30 years old and presumed to be a mature adult. However, since at least 2001 he has demonstrated poor judgment about his finances. It is extremely rare that someone is presented, not just one, but two clear opportunities to resolve their debts as was the case here. It may be that Applicant's wife made it difficult for Applicant to use the \$25,000 more wisely in 2005. However, Applicant had already shown poor judgment in such a situation even before he met his wife. Despite the fact he now appears to be on the right track financially, it is too soon to tell if Applicant will continue to exercise sound judgment about his money that would reflect well on his suitability for access to classified information. A fair and commonsense assessment¹⁰ of all available information shows Applicant has not satisfied the doubts about his suitability for access to classified information that are established by the results of the government's investigation. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.¹¹

¹⁰ See footnote 4, *supra*.

¹¹ See footnote 7, *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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c - 1.f:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge