



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-16299
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)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

January 30, 2009

Decision

MALONE, Matthew E., Administrative Judge:

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

On June 6, 2007, 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 receiving clerk. After reviewing the results of Applicant's 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 continue Applicant's access to classified information. On May 30, 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 decision without a hearing. On November 10, 2008, Department Counsel prepared a File of Relevant Material (FORM)³ in support of the government's preliminary decision. Applicant received the FORM on November 20, 2008, and was given 30 days to file a response to the FORM. He did not timely respond to the FORM by the December 20, 2008, deadline. The case was assigned to me on January 21, 2009.

Findings of Fact

The government alleged Applicant owed approximately \$38,713 for nine delinquent debts listed in SOR ¶¶ 1.a - 1.i. In response to the SOR, Applicant admitted all of these allegations. The government also alleged in SOR ¶¶ 2.a, 2.b, and 2.c that he deliberately falsified his answers to financial questions 28.a, 28.b and 27.d in his e-QIP. In response thereto, Applicant admitted that he answered as alleged but denied that he did so intending to falsify the information requested. Accordingly, his responses to ¶¶ 2.a, 2.b, and 2.c are entered as denials. Finally, the government alleged that Applicant lost his driver's license in 2006 as a result of a judgment entered against him in favor of an insurance company (SOR ¶ 2.d); that his wages are being garnished by the state where he lives to satisfy a delinquent child support account (SOR ¶ 2.e); that he left a job in September 2006 under adverse circumstances (SOR 2.f); and that he was convicted in December 2005 of an arrest in May 2005 for driving while intoxicated (DWI) (SOR ¶ 2.g). In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 29-year-old high school graduate with some college course work to his credit. He has never been married but is the father by different mothers of two children, ages nine and eight, for whom he is obligated to pay monthly child support. In 2004, Applicant incurred a \$17,000 arrearage in support for his older child. He appeared in court and, by court order, his pay has been garnished at a rate of \$252 each month. The balance on this debt is currently \$15,556. (FORM, Item 4)

In 1998, Applicant was sued by an insurance company representing a party to a traffic accident Applicant was involved in. A judgment subsequently entered against him for \$21,068 remains unpaid. Applicant claims he first became aware of the judgment in 2006, when, after a traffic stop, his license was revoked because of the judgment. He has not taken any action to resolve the judgment and it is unclear if he has recouped his driving privileges. (FORM, Items 4 and 5)

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 See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the government's case.

Applicant also owes approximately \$2,089 for seven other delinquencies. One of his debts is for a \$220 civil judgment against him which he has not paid. According to a credit report, the judgment was entered in August 2000 (FORM, Item 7), but Applicant claims to have no knowledge of the judgment or the underlying debt. There is no other available information about this debt. (Answer to SOR; FORM, Item 4) The remaining debts are delinquent consumer accounts dating back to 2001. One of the debts (SOR ¶ 1.1) is for a telephone account he obtained for his mother, who was supposed to make the payments. When he was interviewed by a government investigator in July 2007 as part of his background investigation, Applicant provided personal financial information that showed he had more than \$1,000 left each month after expenses. By his own admission, Applicant's debts are the result of immaturity and poor money management. (FORM, Items 4 and 7)

In 2005, Applicant was arrested and charged with DWI while driving on or near a military installation. He was convicted of the charge and sentenced to one year of supervised probation and ordered to attend alcohol safety and awareness counseling. (FORM, Items 3 and 9) In 2006, Applicant left a job he had held for five years. He left by mutual agreement with his employer because his attendance was unsatisfactory. (FORM, Item 3)

When Applicant submitted his e-QIP in June 2007, he disclosed the wage garnishment for his child support arrearage, the end of his 2006 employment, and his DWI conviction. He also listed only one of his delinquent debts and did not list either of the civil judgments against him. (FORM, Item 3) In response to the SOR allegations of deliberate falsification, he claimed he thought he did not have to list judgments more than seven years old and that he did not remember his other debts or details about them.

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, those 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 AG ¶ 15 (Guideline E- Personal Conduct) and AG ¶ 18 (Guideline F - financial considerations).

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. 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 any reasonable doubt about an applicant's suitability for access in favor of the government.⁷

Analysis

Personal Conduct.

The security concern about Applicant's personal conduct, as addressed 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. Of special interest is any failure to provide truthful

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).

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant denied the allegations (SOR ¶¶ 2.a - 2.c) that he deliberately falsified his answers to e-QIP questions about his finances. Thus, it was the government's burden to prove he acted with the requisite intent to falsify or mislead. (Directive, E3.1.14) Applicant's discrepant e-QIP answers were not discussed during his subject interview with a government investigator. (FORM, Item 4) Applicant disclosed one delinquent debt in response to question 28.a. He also disclosed his wage garnishment for his child support debt. His claims that he could not remember details about other delinquent debts he owed is plausible, as is his contention that he thought he did not have to disclose judgments greater than seven years old. Had he not disclosed other adverse financial information in his background, or if he had concealed adverse information about other facets of his background, I might reach a different conclusion. However, having considered all of the available information about his apparent intent when he submitted his e-QIP, I am satisfied he did not intend to falsify his answers to his e-QIP as alleged. SOR ¶¶ 2.a , 2.b and 2.c are resolved for the Applicant.

As to the remaining allegations, the government's information is sufficient to show that he lost his driver's license as a result of the civil judgment after his 1998 accident (SOR ¶ 2.d) and that his wages are being garnished to satisfy his child support arrearage (SOR ¶ 2.e). However, these allegations merely plead facts related to and in support of the allegations at SOR ¶¶ 1.a and 1.e, respectively. As such, they are not potentially disqualifying in and of themselves. Accordingly, I conclude SOR ¶¶ 2.d and 2.e for the Applicant.

Available information also supports the allegations that Applicant left his job in 2006 by mutual agreement with his employer because of unacceptable attendance (SOR ¶ 2.f), and that he was arrested and convicted of DWI in 2005 (SOR ¶ 2.g). These facts require consideration of the disqualifying conditions at AG ¶ 16(c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*). In response, Applicant has not presented any information to show that these events should no longer undermine confidence in his judgment or willingness to abide by rules and regulations. In light of all of the information about his personal conduct, I conclude Applicant has failed to mitigate the security concerns about his personal conduct.

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 the SOR ¶¶ 1.a - 1.i. Further, Applicant admitted he owes more than \$38,700 for nine delinquent debts. He has not acted voluntarily to resolve any of the debts, some of which have been due for more than seven years. Further, Applicant earns enough money to pay or otherwise resolve seven of the nine delinquencies, which average less than \$300 each. Applicant admits he incurred his debts through irresponsibility and immaturity. Accordingly, available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), 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 AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response, Applicant did not present sufficient information to support application of any of the mitigating conditions at AG ¶ 20. His debts are recent and ongoing. Despite having the means to take action to resolve at least some of his more modest debts, he has failed to act in any meaningful way to improve his financial condition. Accordingly, I conclude Applicant has failed to mitigate the government's adverse information about his finances.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 29 years old and presumed to be a mature adult. However, the great weight of the information presented shows he has failed to meet his personal, professional and paternal obligations over much of his adult life. There is no positive information in this record about any facet of his background. A fair and commonsense assessment⁸ of all available information bearing on Applicant's finances and personal conduct shows he has failed to address satisfactorily the government's 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 government.⁹

⁸ See footnote 4, *supra*.

⁹ 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 - 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a - 2.e:	For Applicant
Subparagraph 2.f - 2.g:	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