



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-16408
)	
)	
Applicant for Security Clearance)	

Appearances

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

October 30, 2008

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 1, 2005, Applicant submitted a Security Clearance Application (SF 86) to renew a security clearance required for his job 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 continue Applicant's access to classified information. On June 10, 2008, 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 me on July 22, 2008, and I convened a hearing on September 4, 2008. The parties appeared as scheduled. The government presented seven exhibits (Gx. 1 - 7). Applicant testified in his own behalf and presented one witness. DOHA received the transcript (Tr.) on September 18, 2008. I left the record open after the hearing to allow Applicant time to present additional relevant information. (Tr. 72) The record closed on September 29, 2008, when I received five documents from Applicant, which have been collectively admitted without objection as Applicant's Exhibit (Ax.) A.

Findings of Fact

The government alleged Applicant owed approximately \$39,863 for 11 delinquent debts listed in SOR ¶¶ 1.a - 1.k. Applicant denied the allegation in SOR ¶ 1.b, but admitted without explanation all of the remaining allegations. In addition to the facts admitted through his response to the SOR, I make the following findings of fact based on my review of the pleadings, transcript, and exhibits.

Applicant is 36 years old and has been employed as an electronics technician by the same defense contractor since 1996. Before that, he was in the United States Navy. Applicant served as a Cryptologic Technician - Maintenance (CTM) and was a second class petty officer (CTM2; paygrade E-5) when he left the service in 1996 after six years of honorable service. (Gx. 1; Gx. 2)

Applicant and his wife were married in 1993 and have four children ranging in age from 6 to 15. But since 1999, he and his wife have been separated more than they have been together. Most recently, Applicant and his wife lived together from about June 2007 until August 2008 because Applicant was severely injured in a motorcycle accident. They tried to reconcile while he recuperated but their efforts failed. They are waiting for one year to pass before they file for divorce. (Tr. 65 - 67) While separated from his wife, he has had to support his own residence as well as that of his wife and children. She is currently employed as an accountant and is better able to support herself. Nonetheless, Applicant currently helps support his wife and children by sending them about \$1,000 each month. He also pays his own rent, utilities, two car payments³ and other expenses, all of which total about \$1,400. Applicant nets about \$3,600 each month and has a second job that nets him about \$600 each month. (Tr. 59 - 60, 66 - 71) From the information Applicant has provided, I estimate he has as much as \$1,800 remaining each month after expenses.

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 Applicant has two cars for himself while his wife has her own car, which she pays for. He has no good reason why he bought a second car. (Tr. 70)

While Applicant was in the Navy, he was generally assigned to seagoing billets and was often away from home. He left the Navy in 1996 because he did not want to be away from his wife and children so much. When he accepted civilian employment he thought he was getting a raise compared to the taxable income from the Navy, but he did not take into account that he was also paid for housing and other benefits. His starting civilian pay was actually a reduction in pay. This circumstance, coupled with Applicant's admitted irresponsible use of credit cards (Gx. 7; Tr. 63), before and after he and his wife first separated in 1999, caused him to amass nearly \$40,000 in past due or delinquent debts. (Tr. 38 - 39, 63 - 66)

Applicant claims he has paid some of the smaller accounts listed in the SOR. Specifically, he claims (Tr. 40) he has paid the medical accounts listed in SOR ¶¶ 1.a (\$111) and 1.i (\$181), but did not provide information to support his claim. Since March 2008, Applicant has been paying \$208 each month to Portfolio, a collection agency for his debt to Bank of America (SOR ¶ 1.b). Applicant also submitted information showing he has made four payments totaling \$537 to NCO between February 2008 and September 2008. (Ax. A) NCO is the collection agency listed in SOR ¶¶ 1.g (\$3,917) and 1.h (\$7,743). Information suggests and the government concedes that these are the same debt. Accordingly, I conclude SOR ¶ 1.h for the Applicant.

Applicant has held a top secret security clearance since he was in the Navy. In 2002, as part of a previous periodic reinvestigation, Applicant was interviewed about his debts by a Department of Defense investigator. In a signed, sworn statement (Gx. 7), Applicant acknowledged his debts were the result of irresponsible spending and poor use of his personal credit. He also averred that he had learned to be financially responsible, that he would seek professional financial advice and counseling to resolve his debts, and that he had "the financial means and the personal inclination to resolve [his] delinquent accounts."

Applicant has a good reputation at work. His supervisor of 12 years, who is familiar with the reasons for the government's intent to revoke Applicant's security clearance, testified Applicant is reliable, honest, and hardworking. (Tr. 79 - 85) Applicant has been active in his community and church for at least 12 years. He belongs to an organization that does charitable work for the handicapped and disadvantaged, he coaches youth sports, and he is an active member of his church. (Tr. 77 - 78)

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:

⁴ Directive. 6.3.

(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 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

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).

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 the SOR. Even though SOR ¶ 1.h appears to be a duplicate of SOR ¶ 1.g, and even accepting Applicant's undocumented claim that he paid SOR ¶¶ 1.a and 1.i, available information shows Applicant still owes as much as \$31,000 for debts that have been delinquent since before 2002. The government's information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response, Applicant presented only minimal proof of payment or efforts to resolve his debts. Available information shows the delinquencies listed in the SOR arose at or before the time of Applicant's 2002 interview. However, despite his statement in 2002 that he would act to resolve his debts, there is no information showing he made any concerted or organized effort to correct his debts and financial problems until early 2008, when he started paying toward the debts in SOR ¶¶ 1.b and 1.g.

Applicant also claimed his marital problems caused or contributed to his debt problems. Indeed, 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*) might provide Applicant with some benefit. However, his inaction for at least six years has not been explained despite the fact it appears his positive monthly cashflow should allow him to make more progress than he has shown. Accordingly, Applicant has not satisfied the AG ¶ 20(b) requirement that he has "acted responsibly under the circumstances."

In summary, there is no basis in the record to support application of any of the other mitigating conditions under this guideline. Accordingly, Applicant has failed to present sufficient information that would mitigate the security concerns raised by the adverse information 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 36 years old and presumed to be a mature adult. He has held a security clearance for about 17 years and should be well aware of the need to attend to his finances. He failed to follow through on his 2002 statement to the government that he intended to resolve his debts. Applicant is a reliable, hardworking employee and is active in support of others in his community. However, absent information that would show he is making progress on his debts and is unlikely to have such financial problems in the future, the favorable information in his background is insufficient to overcome the security concerns about his lengthy history of bad debt. The facts and circumstances of Applicant's finances present an unacceptable risk to the national interest were his access to classified information to continue. 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 government.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:	For Applicant
Subparagraph 1.b - 1.g:	Against Applicant
Subparagraph 1.h - 1.l:	For Applicant
Subparagraph 1.j - 1.k:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's 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*.