



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



In the matter of:)
)
) ISCR Case No. 07-17189
)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esquire, Department Counsel

For Applicant: *Pro Se*

December 17, 2008

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for Financial Considerations and Personal Conduct. Accordingly, his request for a security clearance is denied.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) on December 17, 2004.¹ After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings

¹ Applicant was asked to submit a new Security Clearance Application in 2008 because the previous application was not in the file. He completed it on March 1, 2008 (Tr. 129-130).

and Appeals (DOHA) were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's request.

On June 20, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision – security concerns addressed in the Directive under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG).³ In his Answer to the SOR, signed and notarized on August 4, 2008, Applicant denied all allegations under both guidelines. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on September 3, 2008, and the case was assigned to me the following day. DOHA issued a Notice of Hearing on October 1, 2008 and I convened the hearing as scheduled on October 22, 2008.

During the hearing, the government offered 14 exhibits, marked as Government Exhibits (GE) 1 through 14, which were admitted without objection. Applicant testified and offered 10 exhibits, which were marked as Applicant's Exhibits (AE) A through J, and admitted without objection.⁴ DOHA received the transcript on October 31, 2008, and the record closed on that day.

Findings of Fact

After a thorough review of the pleadings, Applicant's response to the Statement of Reasons, and the record evidence, I make the following additional findings of fact.

Applicant, 42 years old, attended three years of college, focusing on business courses (GE 1; Tr. 5). He married in 1986 and has two sons, 17 and 18 years old. He also has one daughter, 17 years old, with another woman. Applicant has been paying child support for his daughter since 1991 (Tr. 110; AE F and H). His child support obligation will end when she graduates high school in June 2009 (AE I; Tr. 44-45).

Applicant served in the U.S. Navy from 1985 to 2006, retiring as a Chief Petty Officer at paygrade E-7 (GE 2; Tr. 45-46). While in the Navy, Applicant worked as a security manager. He was awarded Sailor of the Month, Sailor of the Quarter, and Sailor of the Year

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ 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. The Revised Adjudicative Guidelines supersede 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.

⁴ The first six documents, AE A - F, were originally attached to Applicant's Answer to the SOR. At hearing, they were severed from the Answer and admitted as exhibits for administrative convenience.

(Tr. 22). Since retiring, he has worked for the same defense contractor, where he is a Security Manager for one of the company's branches. He also performs Human Resources functions. According to his income tax returns, Applicant's income has risen from a 1999 gross income of \$22,000 to a 2007 gross income (salary and pension) of \$95,761 (AE E). In mid-2007, his monthly net remainder was \$1,149 (GE 3).

The Statement of Reasons alleges the following 18 debts, totaling approximately \$49,000.

- **1.a. (car loan, \$8,094)** - Applicant returned a faulty car to the dealer; loan company filed judgment while Applicant was stationed overseas. He understands he is legally responsible to pay under the purchase contract (GE 3). He made a few payments to the dealer's attorney and was told that was sufficient. He has no documentation and no intent to pay the outstanding judgment (GE 13; AE B; Tr 50-55).
- **1.b. (car loan, \$421)** - denies because debt was dismissed based on a class action suit; no documentation (GE 13; Tr. 56-58).
- **1.c. (furniture purchase, \$2,677)** - after a dispute, Applicant returned goods to company, which filed a judgment. Applicant was unaware of judgment until he received SOR. Contacted company and was told it has no record of debt; no documentation of contact. He believes the account is closed because it is 12 years old (Tr. 58-61).
- **1.d. (loan, \$7,069)** - denies because he believes the loan, which he co-signed with his father, has been paid; no documentation (Tr 61-65).
- **1.e. (\$1,023), 1.i. (\$967) and 1.r. (\$941) (credit card accounts from same creditor)** - denies because his wife paid a settlement of \$595. Based on two different account numbers in the credit reports, Government contends there are two accounts. On one account, Capital One sued his wife for \$1,219, and she settled the debt for \$595; on the other account, Capital One sued Applicant, and that debt of \$1,302 remains unpaid (GE 7, 8 and 9; AE C and D; Tr 65-78).
- **1.f. (telephone, \$723)** - disputes because he does not recognize debt. Applicant states that the company is no longer in business (Tr. 34; 78-79).
- **1.g. IRS tax lien (tax years 1992 - 1996, \$13,061)** - denies because debt has been paid by allotment from his salary since the mid-1990s. Applicant believed he was not required to file income tax returns while stationed overseas in the mid-90s. Upon filing when he returned to the United States, he owed approximately \$13,000 (AE E and G; Tr 79-95).

- **1.h. (cable, \$209)** - denies charge for cable box because he returned it; no documentation (Tr 95-98).
- **1.i. credit card (\$967)** - see 1.e., above.
- **1.j. (credit card, \$893)** - denies because he paid it. In his Interrogatory of November 2007, Applicant stated it is his wife's account. In his subject interview, he stated that he settled this account through a collection agency for \$499. However, the Interrogatory document showing a \$499 settlement relates to another collection agency, and other creditors, with no mention of the creditor in allegation 1.j. (GE 3, 4 and 7; Tr 98-100).
- **1.k. (car loan, \$5,112)** - denies because he paid the debt in 2007. He contacted the company verbally but has no documentation. Based on two different accounts numbers for this creditor in the credit reports, Government contends there are two accounts – one for a car purchased in 1999 for \$10,000, which has been paid off, and a second account for a car purchased in 2001 for \$16,000, which has a delinquent balance of \$5,000. Applicant denies having two car loans with this creditor (GE 7; AE J; Tr 100-103).
- **1.l. (car loan, \$1,075)** - denies that he was 90 days delinquent (GE 9; Tr 108-109).
- **1.m. (child support, \$400)** - denies because court-ordered payments have been deducted from his salary since 1991 (AE F, H and I; GE 9; Tr 109).
- **1.n. (loan, \$3,709)** - denies because he paid it in 1998; no documentation (GE 10; AE J; Tr 111-115).
- **1.o. (college tuition, \$4,167)** - denies because payment should have been made from a Navy scholarship (AE A; Tr 115-116).
- **1.p. (timeshare, \$2,231)** - denies because he sold timeshare back to company; no documentation (Tr 116-118).
- **1.q. (citation for speeding, \$100)** - denies because he paid online in June 2008; no documentation (Tr 118-119).
- **1.r. (credit card, \$941)** - see 1.e., above.

Applicant denies owing the eighteen debts alleged in the SOR. As to four of the debts, I find the following: Applicant paid the IRS tax lien alleged at 1.g., related to due tax years 1992 through 1996 (AE G); he was never 90 days past due on his payments on the car loan alleged at allegation 1.l. (GE 7, 8 and 9; AE J); based on his record of consistent monthly payments automatically deducted from his salary, he was not one month past due

in child support as alleged at 1.m. (AE F, H and I); and Applicant was not responsible for the tuition debt alleged at 1.o., which was to be paid with a Petty Officer Scholarship he was awarded; the account was sent for collection by error (GE 3; AE A).

I also find that, without documentation, Applicant failed to support his claim that he paid or does not owe the debts alleged at 1.a., through 1.f, 1.h. through 1.k., 1.n., and 1.p. through 1.r.

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).⁵ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

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) and Guideline E (Personal Conduct).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ 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.⁷ 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 judgment, reliability and trustworthiness to protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

about an Applicant's suitability for access in favor of the government.⁸

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

Failure 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The facts presented support application of two disqualifying conditions. AG ¶19(a) (*inability or unwillingness to satisfy debts*) applies. Although Applicant earns a substantial salary, supplemented by his military pension, he has allowed delinquencies to accrue to the point where he carries a significant debt load. Despite a \$20,000 increase in salary in 2006, and an additional \$30,000 increase in 2007, Applicant allowed numerous judgments and delinquencies to remain unresolved. AG ¶19(c) (*a history of not meeting financial obligations*) also applies because many of Applicant's debts, which started becoming delinquent around the mid-1990s, still appear in his 2007 and 2008 credit bureau reports.

AG ¶19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*) also applies because Applicant did not timely file his federal tax returns. His 1992 - 1996 returns were filed when he returned from overseas duty, and resulted in the \$13,000 tax lien alleged at 1.g. Applicant also failed to file other returns timely. His 1999 and 2000 returns were filed in 2001; his 2001 and 2002 returns were filed in 2004, and his 2004, 2005 and 2006 returns were filed in July 2007 (AE E).

The financial considerations guideline also includes factors that can mitigate disqualifying conditions. Five mitigating conditions are relevant to the facts:

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;

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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;

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;

AG ¶20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Applicant's debts are both numerous and recent. Although some became delinquent in the 1990s, delinquencies continued to accrue in the 2000's and many still appear on his 2007 and 2008 credit bureau reports. AG ¶20(a) does not apply.

The key element in mitigating condition AG ¶20(b) is that the factors that caused the financial problems were beyond the Applicant's control. Nothing in the evidence or testimony indicates that factors such as unemployment, divorce or other unforeseen events interfered with Applicant's ability to pay his debts. Mitigating condition AG ¶20(b) cannot be applied.

Although Applicant contends that his debts are paid, he could support that contention only as to four of his debts. He provided no documentation to show that eight other debts have been paid. Without documentation to support his contention, I cannot conclude that Applicant either resolved these debts or made a good-faith effort to do so, and neither AG 20 ¶(c) nor AG ¶20(d) can be applied. Finally, AG 20(e) also does not apply. Although Applicant claims that he does not recognize the debt to C&P Telephone, there is no evidence that he has taken action to notify the credit bureau report to rectify his credit report. I resolve Guideline F against Applicant.

Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

Conduct 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 and candid answers during the

security clearance process or any other failure to cooperate with the security clearance process.

The government alleges that Applicant deliberately failed to disclose his financial delinquencies, implicating AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant failed to report any financial issues on either his 2004 or his 2008 Security Clearance Application. Even though his IRS tax lien was not released until 2007, and was delinquent at the time he filled out his Security Clearance Application in 2004, he answered “No” to question 36. Similarly, as shown in Applicant’s credit bureau reports, he had numerous debts that had been six months past due during the seven years before he completed the applications both in 2004 and in 2008. Applicant had a long history of financial problems and, at the time he completed his Security Clearance Applications in 2004 and in 2008, he still had not resolved them. Yet he submitted “clean” applications, giving the government no indication that finances were an issue to be investigated further.

As to mitigation, AG ¶¶17(a) and 17(c) are relevant. There is no evidence that Applicant informed any authorized government official that he wished to correct the answers on his applications. Although he discussed his debts with the investigator during his interviews, the Appeal Board has held that subsequent honesty at an interview does not negate the security implications of initial dishonesty on security clearance applications.⁹ AG ¶17(a) cannot be applied. Neither is AG ¶17(c) applicable (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*). Applicant’s conduct cannot be considered minor because he failed to be forthright with the government not once, but on two separate occasions during a security clearance investigation. In addition, Applicant submitted his latest security clearance application less than one year ago, making his conduct recent. I resolve Guideline E against Applicant.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant’s security eligibility by considering the totality of the Applicant’s conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

⁹ ISCR Case No.02-23073 at 3 (App. Bd. Mar 20, 2004).

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole person concept. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

At the time these debts were incurred, Applicant was a mature and experienced adult. In addition, the questions on his security clearance application in 2004, the discussion of finances during his 2007 interview, and his own knowledge as a personnel security officer should have impelled him to resolve his debts and rectify his credit report. Yet numerous debts remain with no documented effort by Applicant. Based on his lack of effort, and his past history of debt accumulation, I cannot confidently predict he will not continue to have financial difficulties and demonstrate lack of reliability and good judgment.

When he completed security clearance applications in 2004 and 2008, Applicant failed to inform the government of his true financial situation. As Applicant worked as a security officer both in the military and in his civilian position, he had or should have had an even greater awareness than the average Applicant of the critical need for truthfulness in the security clearance process. Nevertheless, he failed to inform the government of his financial problems, not only in 2004, but again in 2008. The government cannot place its confidence in those who do not demonstrate the highest level of trustworthiness and reliability.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline F	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

Paragraph 2, Guideline E	Against Applicant
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge