



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



In the matter of:)
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SSN: -----) ISCR Case No. 08-01256
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Applicant for Security Clearance)

Appearances

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

November 24, 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 20, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor, for whom he has worked since May 2006. (Gx. 1) 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 April 17, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised

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

Adjudicative Guidelines (AG)² under Guideline E (personal conduct) and Guideline F (financial).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on July 9, 2008, and I convened a hearing on September 4, 2008. The parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 7). Applicant testified in his own behalf, submitted one exhibit (Ax. A) 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 three additional documents from Applicant, which have been collectively admitted without objection as Applicant's Exhibit (Ax.) B.

Findings of Fact

The government alleged Applicant owed approximately \$36,109 for 16 delinquent debts listed in SOR ¶¶ 1.a - 1.p. In response to the SOR, Applicant admitted owing these debts and asserted they would be included in a Chapter 13 bankruptcy petition he intended to file. The government also alleged that Applicant deliberately falsified his answers to e-QIP questions 28.a (debts more than 180 days past due in the last seven years) (SOR ¶ 2.a) and 23.d (any alcohol- or drug-related offenses ever) (SOR ¶ 2.b).

Applicant is 45 years old. He has been married twice. Most recently, he was married in 1998 but divorced in 2003. The marriage fell apart when the company he worked for moved in 2002, leaving him unemployed for almost a year. Attempts at reconciliation ended because of the effects on both him and his ex-wife from the accidental death of her son. Applicant moved away and neither he nor his ex-wife continued paying their bills. (Tr. 30 - 31, 55) The marital residence went into foreclosure, Applicant returned a car for repossession (SOR ¶ 1.l for \$11,164), and a number of credit cards (SOR ¶¶ 1.a, 1.c, and 1.d, totaling \$22,643) went unpaid. Utility bills left over from the marital residence (SOR ¶¶ 1.b, 1.g, 1.j, 1.n, 1.o and 1.p, totaling \$978) some of which are less than \$100, have gone unpaid since about 2003. Finally, Applicant is delinquent on three medical accounts totaling \$639 (SOR ¶¶ 1.k - 1.m). (Gx. 2; Gx. 4)

When Applicant left his marital residence, he was unemployed. He eventually moved back to his hometown where he currently lives and works. He struggled to find employment, but now has a steady job. His current job required extensive travel for the first 10 months. He was able to save much of the per diem he received and used it to buy a boat in 2007. (Tr. 58 - 59) He lives well within his means, pays his current obligations on time, and has about \$1,100 remaining after expenses each month; however, this number does not reflect any payments to creditors. (Gx. 2; Tr. 37, 55 - 58) When he received interrogatories from DOHA adjudicators in February 2008 (Gx. 2),

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.

Applicant retained a bankruptcy attorney. (Ax. A) He has paid the retainer and appears to have funds for the filing fee, but has not yet provided his attorney with all of the information needed to actually file a petition. (Ax. A; Tr. 34 - 35)

When Applicant filled out his e-QIP, he answered “yes” to question 28.a (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*) The only debt he listed was for a truck repossession during his divorce. Applicant knew his finances and credit rating were in trouble but insists he did not know he owed as much debt as the government’s information shows. He first became aware of the true extent of his debt in September 2007, when he was interviewed by a government investigator during his background check. (Tr. 37 - 38)

Applicant was arrested in 1988, 1991 and 2000 for driving under the influence of alcohol (DUI). His 1988 arrest also included a charge of misdemeanor possession of marijuana. He was convicted of the charges each time. (Gx. 5) When he filled out his e-QIP, he answered “yes” to question 23.d (*Have you ever been charged with or convicted of any offense(s) related to drugs or alcohol?*) He disclosed a March 1996 DUI, by which he was probably referring to his 1991 arrest. (Tr. 41 - 42) Applicant explained he either did not understand the question or that he was advised by someone at work that he only had to go back 10 years. (Tr. 32 - 33, 39 - 40) However, his reference to a 10-year time frame makes no sense in light of his disclosure of a 1996 (actually 1991) arrest. He did not disclose his DUI offense in 2000. (Tr. 42 - 44)

Applicant has a good reputation at work. His most recent performance evaluation reflects above-average performance and his supervisor characterizes him as reliable and hardworking. (Ax. B) A long-time friend testified that Applicant is sincere and trustworthy. The witness also corroborated Applicant’s claim that he struggled to get back on his feet after his most recent divorce, but that he is now doing better financially. (Tr. 59 - 64)

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).³ 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

³ 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 interest⁴ 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.⁵

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.⁶

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.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

The government presented sufficient information to support all of the allegations in SOR ¶ 1. Available information also shows Applicant has not paid or resolved any of the debts listed therein. Those debts have been delinquent for about five years. The record in this case 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 information about his loss of employment, his divorce and his stepson's untimely passing as the circumstances that led to his financial problems. This information requires consideration of 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*). He also presented information showing he has taken steps to resolve his indebtedness by retaining a bankruptcy attorney who will help him repay the debts through a Chapter 13 wage earners' plan. Additionally, his current finances show he is living within his means and should be able to comply with Chapter 13 payments.

Personal and professional events, such as Applicant has experienced, can have a significant impact on one's ability to manage personal finances. However, it is not unreasonable to expect that Applicant would be more responsive five years later when faced with such problems. It may be that Applicant was not fully aware of the depth of his indebtedness before he was interviewed by an investigator in September 2007. He has chosen bankruptcy as a way to resolve his debts. While this option may be an acceptable means of resolving one's debts, Applicant waited until March 2008 to hire a bankruptcy attorney. As of the date of his hearing, he had not yet given the attorney all of the information needed to file a petition. Despite the relative health of his current monthly budget (which enabled him to buy a boat last year), Applicant has not satisfied the AG ¶ 20(b) requirement that he has "acted responsibly under the circumstances."

Applicant's debts are significant, and must be considered as recent and ongoing in light of the absence of action to resolve them. In summary, there is no basis in the record to support application of any of the 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.

Personal Conduct.

A security concern may also exist when, as stated in AG ¶ 15, available information reflects

[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.

The government alleged that Applicant deliberately omitted information about his finances and his arrest record when he answered e-QIP questions 28.a and 23.d, respectively. The government's information shows Applicant answered "yes" to both questions, but that he listed only one of his 16 debts and one of his four drug- or alcohol-related criminal offenses. Applicant denied intentionally falsifying his answers.

As to SOR ¶ 2.a, he claimed he was not aware of the full extent of his finances and listed a repossession debts associated with his divorce. However, he also acknowledged that he and his wife had "walked away" from their finances when the marriage ended. Based on that knowledge, he should have been able to at least disclose the possibility of other debts. As to SOR ¶ 2.b, Applicant claimed he was told he only had to list arrests within the preceding 10 years; however, what he actually listed was more than 10 years old and he failed to list his only arrest within the past 10 years.

Because Applicant denied this allegation, the government bore the burden of "presenting witnesses and other evidence to establish facts that have been controverted." (Directive, Enclosure 3, Section E3.1.14) To be disqualifying, it must be shown Applicant knowingly providing false information about relevant information in his background. Applicant's e-QIP answers to both questions, viewed together and in light of all of the information bearing on his finances and arrest record, show he did intend to minimize the full extent of the adverse information about these issues in his background. Accordingly, available information requires application of the disqualifying condition at 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;*).

In response to the government's information, Applicant provided conflicting testimony about his intent at the time he completed the e-QIP. He acknowledged awareness of financial problems but did not explain why he did not disclose other debts he may have been aware of. His explanation about his answer to the question about drug-/alcohol-related offenses did not make sense and lacked credibility. Available information does not support application of any of the Guideline E mitigating conditions. Accordingly, Applicant has not carried his burden of disproving, mitigating, or extenuating the adverse information about his personal conduct.

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 45 years old and presumed to be a mature adult. He has experienced personal and professional difficulties that caused him financial problems. He is credited for taking some steps to resolve his debts, but he generally has not acted responsibly in the face of his financial problems since obtaining steady employment two years ago. He has not shown that his debts will be resolved so that he can avoid being at risk of acting inappropriately to raise

needed funds. He has also demonstrated a willingness to hedge the truth to further his own interests (in this case, to get a clearance needed for his job). These facts together undermine my confidence in his willingness or ability to protect the government's interests as his own. The facts and circumstances of Applicant's finances and personal conduct present an unacceptable risk to the national interest were he to be given access to classified information. A fair and commonsense assessment⁷ of all available information 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.⁸

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.p:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a - 2.b:	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

⁷ See footnote 3, *supra*.

⁸ See footnote 6, *supra*.