



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-01681
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Applicant for Security Clearance)

Appearances

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

January 23, 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 granted.

On November 8, 2005, 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 network security engineer. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent interrogatories to Applicant to obtain clarification of and/or additional information about adverse information in his background.¹ After reviewing the results of the background investigation, including Applicant’s response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

¹ Authorized by DoD Directive 5220.6, Section E3.1.2.2.

finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On July 14, 2008, DOHA sent Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)³ under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on September 24, 2008, and I convened the hearing on October 23, 2008. The government presented three exhibits (Gx. 1 - 3). Applicant and his wife testified, and he submitted three exhibits (Ax. A - C). I also left the record open after the hearing to receive additional relevant information. On December 1, 2008, I received Applicant's post-hearing submission, which is included in the record without objection as Ax. D. DOHA received the transcript of hearing (Tr.) on or about November 3, 2008.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$23,483 for seven delinquent debts (SOR ¶¶ 1.a - 1.g). Applicant admitted with explanation the allegations in SOR ¶¶ 1.a and 1.c. He denied with explanation the allegations in SOR ¶¶ 1.b. 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 held his current defense contractor job since August 2005. He was also employed by a defense contractor from October 2003 until being laid off after his company lost its contract in June 2005. Applicant served on active duty in the United States Navy from October 1997 until October 2001. Since then, he has served part-time in the Navy Reserve, and he was recalled to active duty in 2006 for an overseas deployment. He has held a security clearance since 1998. (Gx. 1)

Applicant and his wife have been married since March 1998. They have two children, ages 9 and 4. His wife has worked as a benefits eligibility specialist for a state agency since about 2004. She had worked for another state agency but was laid off due to budget cuts in 2003. Thereafter, she was unemployed for about six to nine months. Applicant's wife also lost income because she was on extended bed rest during her two pregnancies in late 1998 / early 1999 and in the summer of 2004. (Tr. 67, 80 - 81)

Applicant and his wife acknowledged they did not manage their finances properly through about 2006. They assert they married too young (they were 19 years old at the time), and they had no outside support from their families. Applicant admitted he was irresponsible when it came to his finances and that he left management of their finances to his wife. However, she was not disciplined enough to live within their means or pay their bills on time. When Applicant left active duty in 2001, he moved his family back to

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. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

the state where he and his wife grew up. They did not plan properly for his loss of income in the form of housing allowances, basic allowance for subsistence, and other benefits. Additionally, he and his wife had difficulty finding employment that paid enough to support them and enable them to stay current on the debts they had incurred while he was in the Navy. (Answer to SOR; Tr. 25 - 29, 49 - 50, 67; Gx. 2; Ax. C)

When Applicant submitted his e-QIP in 2005, he acknowledged at least one delinquent debt. A credit report obtained during his background investigation showed he had multiple delinquencies dating back to 2002. More specifically, as alleged in the SOR, Applicant owed approximately \$23,483 for seven delinquent debts. (Gx. 3) The status of those debts is as follows:

- SOR ¶ 1.a: Applicant is paying \$100 each month to BB&T for a credit card charged off as a business loss. As of October 2008, the balance was reduced from \$6,570 to \$5,169. (Answer to SOR; Tr. 50; Gx. 2; Ax. D)
- SOR ¶ 1.b: Applicant repaid a \$483 delinquent Capital One credit card account through a collection agency in April 2008. (Answer to SOR; Gx. 2; Tr. 16, 51)
- SOR ¶ 1.c: In March 2008, Applicant began making \$100 monthly payments on a delinquent loan account with the Navy Federal Credit Union. In December 2008, he increased his monthly payment to \$250, the amount owed has decreased from \$8,079 to \$4,102. (Answer to SOR; Gx. 2; Ax. B; Ax. D; Tr. 51-52)
- SOR ¶ 1.d: A \$308 debt owed to the Great Lakes Credit Union was paid off through a collection agency in April 2008. (Answer to SOR; Gx. 2; Ax. D; Tr. 53)
- SOR ¶ 1.e: A \$566 debt owed to Hecht Company was paid off in May 2006. (Answer to SOR; Tr. 45 - 46; Gx. 2)
- SOR ¶ 1.f: Applicant disputes a Direct TV account listed as delinquent in the amount of \$118. He discontinued the service in 2001 when he moved his family after leaving active duty. The creditor has no record of any debt owing or other information about Applicant. (Answer to SOR; Gx. 2; Tr. 47; Ax. D)
- SOR ¶ 1.g: Applicant denied he owes \$7,359 after completing a lease agreement for a car in 2003. Applicant leased a car in 1999 and returned it as agreed in 2003. He was told at the time that he owed nothing further. Several months later, he received a bill for over \$7,000. Applicant verbally disputed the debt, but did not pursue the matter forcefully until 2008, when he began responding to the government's concerns about his finances. Neither Applicant nor Department Counsel produced a copy of the lease agreement to determine Applicant's obligations. Despite the fact he disputes owing this debt, Applicant has reached a settlement agreement with the law firm collecting the debt whereby he will repay \$2,000 in satisfaction of the debt. To that end, he has paid \$600 and will pay the remainder with his re-enlistment bonus in February 2009. (Answer to SOR; Gx. 2; Ax. D) Tr. 35 - 43, 57 - 60, 71 - 72)

Applicant and his wife have a net positive cash flow each month of about \$1,300 after expenses, including repayment of some of the debts listed in the SOR. In response to the government's interrogatories, Applicant submitted information that shows they have been acting to pay or resolve debts in addition to those listed in the SOR. They have also taken courses in financial management and budgeting skills, and have a detailed system for tracking and prioritizing their monthly bills, and for making decisions about their finances. (Gx. 2; Ax. C)

Applicant has served with distinction in the Navy and Naval Reserve. He is also active in his community through his work as a volunteer fire fighter, as a youth sports coach, and through his church membership. Personal and professional references show he enjoys a good reputation for reliability, trustworthiness and integrity. (Answer to SOR; Tr. 23 - 25; Ax. A; Ax. C)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ 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 interest⁵ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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 SOR ¶ 1. Available information shows approximately \$23,483 in delinquent debt for seven accounts attributable to Applicant since as far back as 2002. Available information shows Applicant still owes at least \$11,271 for three of the debts alleged in the SOR; that the debts in question have been unpaid or unresolved for several years; and that Applicant incurred the debts through irresponsibility and excessive use of personal credit. Accordingly, the record in this case 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*).

By contrast, the record supports application 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*

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

current reliability, trustworthiness, or good judgment), 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 has paid or otherwise resolved about 53% of the total debt alleged in the SOR. Additionally, as shown by the repayment of the SOR ¶ 1.e debt and by the information he submitted in response to the SOR, as early as 2006 Applicant and his wife have been taking what action they could to pay their past due debts. There is also information that shows Applicant and his wife were hindered in their efforts at least twice since 2004 by his wife's pregnancy-related medical issues and her nine month lay-off.

As to the debt at SOR ¶ 1.f, Applicant supported his contention the debt is erroneous. As to the debt at SOR ¶ 1.g, Applicant still denies owing the debt, but feels it is easier to try to pay it off than to contest it. He has reached a settlement agreement with the creditor and now owes less than 25% of the original debt. Applicant's current finances are sound, they have realized the importance of proper management of their finances, and they will likely have paid or resolved all of their delinquencies in the next 18 months. On balance, and in consideration of the whole person information discussed below, Applicant has mitigated the security concerns raised by 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). There has been no misconduct here. Applicant is a mature adult who did not soon enough appreciate the importance of personal attention to his finances. He and his wife married young and neither had lived on their own before. Applicant was on active duty in the Navy and he felt he could leave their finances to his wife. Ten years have passed and they have personally and financially matured. Their income is steady, they are current on their obligations, and they are progressing in their efforts to resolve their remaining delinquencies. More importantly, Applicant is personally involved with his finances. Having also considered the positive information about his reliability and trustworthiness in the community, I conclude his financial difficulties do not current reflect poorly on his judgment and that it is unlikely he will experience financial problems of his own doing. The circumstances that gave rise to his financial problems are not likely to recur or cause further delinquencies.

The positive information about Applicant's character and reliability is also sufficient to show that the adverse information about his finances cannot be used as a

means to pressure or coerce him into acting contrary to the national interest. A fair and commonsense evaluation of this record shows that the security concerns about Applicant's continued suitability for access to classified information have been satisfied.

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: FOR APPLICANT

Subparagraph 1.a - 1.g: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant Applicant's request for a security clearance. Continued eligibility for access to classified information is granted.

MATTHEW E. MALONE
Administrative Judge