



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-03143
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)	
Applicant for Security Clearance)	

Appearances

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

November 20, 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 granted.

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 July 21, 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 whereby he admitted with explanation all of the allegations and requested a decision without a hearing. On September 23, 2008, Department Counsel prepared a File of Relevant Material (FORM)³ in support of the government's preliminary decision. Applicant received the FORM on October 2, 2008, and was given 30 days to file a response to the FORM. He timely responded to the FORM and the case was assigned to me on November 5, 2008.

Findings of Fact

The government alleged Applicant owed approximately \$30,118 for 15 delinquent debts listed in SOR ¶¶ 1.a - 1.o. In response to the SOR, Applicant admitted with explanation all of the allegations. He also claimed, and Department Counsel concedes, that the debts in SOR ¶¶ 1.l, 1.m, and 1.n are duplicates of SOR ¶¶ 1.e, 1.f, and 1.d, respectively. As to SOR ¶¶ 1.a - 1.j, he asserted the debts were or would be paid between July and September 2008. As to SOR ¶¶ 1.k and 1.o, Applicant claimed the debts were old and was not sure if he owed them or not.

In his response to the FORM, Applicant presented information showing he has paid the debts listed in SOR ¶¶ 1.a, 1.b, 1.f, 1.g, 1.h, 1.l, and 1.j. He also showed that he is paying the debts listed in SOR ¶¶ 1.c, 1.d, and 1.e according to settlements he has negotiated with each creditor.

Applicant is 37 years old and requires a security clearance as part of his work for a defense contractor for whom he has worked since April 2006. He has held a security clearance since 1989 when he was in the Navy. Applicant was married in October 1994 but divorced in November 2004. The marriage produced one child, for whom Applicant was ordered to pay monthly support. There is no information showing he has failed to meet that obligation.

As part of his work with a defense contractor, he moved to an overseas job site in May 2006. Applicant asserts some of his debts were left over from his marriage and that others were accounts for which he did not receive bills when he moved overseas.

Applicant provided information during the adjudication of the results of his background investigation showing he has a positive monthly cashflow of about \$2,225 after expenses. In response to the FORM, he also averred he is more closely monitoring his credit and has taken steps to improve his ability to manage his finances.

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 11 documents (Items 1 - 11) proffered in support of the government's case.

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 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

⁴ Directive. 6.3.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

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 all of the allegations in the SOR. Even though SOR ¶¶ 1.l, 1.m, and 1.n are duplicates, available information showed Applicant still owed about \$22,718 for 12 delinquent debts. Some of those debts had been due since 2003. Accordingly, the government's information required 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 showing that some of his debts went unpaid because of his divorce or because of his overseas move. He also showed that, of the 12 debts still attributable to him, only two debts totaling less than \$2,000 have not been paid or otherwise resolved. He further showed his current finances are sound and that he has taken steps to improve his ability to manage his money. The record also shows he has not incurred any new delinquencies since moving overseas in 2006. Accordingly, the record requires application of the mitigating conditions listed 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 current reliability, trustworthiness, or good judgment*), 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*), and 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*). Owing to the positive information about his finances and the documented payments to his creditors, I conclude Applicant has presented sufficient information to mitigate the security concerns raised by the government's adverse information about his finances.

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

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 37 years old and presumed to be a mature adult. He has held a security clearance without incident for about 19 years. He has been thorough and straightforward in his response to the government's concerns about his finances. While it would have been preferable for him to have addressed his debts earlier than he did, the fact remains all but about 10% of his debts have been addressed. His income is more than sufficient to pay his remaining obligations while avoiding future delinquencies. The facts and circumstances of Applicant's finances do not 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 he has addressed satisfactorily the government's doubts about his ability or willingness to protect the government's interests as his own.

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.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l - 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 4, *supra*.