



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



In the matter of:)
)
) ISCR Case No. 08-03807
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

November 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. Accordingly, his request for a security clearance is denied.

On November 9, 2007, Applicant submitted a Questionnaire for Sensitive Positions (SF-86) to request a security clearance required as part of his employment with a defense contractor (Item 5). 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 grant Applicant's request.

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

On June 19, 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) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR (Item 1) on July 3, 2008. He signed his notarized Answer on July 21 2008, in which he admitted to SOR ¶¶ 1.a, 1.c. and 1d. He denied SOR ¶¶ 1.b, 1.e. and 1.f. In his Answer, Applicant also requested a decision without a hearing.

On August 29, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM)² in support of the government’s preliminary decision. Applicant was given 30 days to file a response to the FORM, but did not reply. I received the case on November 5, 2008.

Findings of Fact

Applicant’s admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant’s response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant is 54 years old and employed by a defense contractor. He served in the U.S. Army from 1974 to 1977 (Item 5). He is married and has four sons, two of whom serve in the military. He attended junior college from 1987 to 1990 and received an associates degree (Item 5). After being steadily employed as an engineering systems analyst from 1998 to 2003, Applicant was laid off. Although he was unemployed for six months, he could not receive unemployment compensation because he was in a “disability” status with his previous employer. He obtained employment at a temporary agency from June 2004 to December 2005, followed by employment as an engineer/administrator for approximately one and a half years, until October 2007. He was then hired by a defense contractor (Item 5).

In his Interrogatory response dated May 23, 2008 (Item 6), Applicant listed his gross monthly income as \$5,356, or about \$65,000 annually. When his net monthly income of \$3,856 and his wife’s net income of \$800 are combined, Applicant’s total net monthly income is \$4,656. After paying his monthly expenses and debt payments, his monthly net remainder is \$1,458 (Item 6).

Applicant’s credit reports show that he has six debts that became delinquent between 2005 and 2006 (Items 7 and 8). These debts, listed in the SOR, total \$24,492. His judgments in favor of Celink (\$8,048) and Credit Union One (\$8,079), along with the

² See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the government’s case.

debt owed to My Personal Credit Union (\$8,144), represent the bulk of his delinquent debt. Of the smaller debts, he denies only the \$85 debt to Comcast Cable (Item 4).

Applicant admits the judgment to Celink (Item 4), which represents the default judgment owed on a repossessed van. Applicant states the van was assigned to his ex-wife in their divorce (Item 6). As to the debt owed to My Personal Credit Union, he states in his Interrogatory response that is a credit card that was assigned to his wife in their divorce agreement. However, in his Answer, he states that this debt is a duplicate of the Celink debt (Item 4). He provided no documentation to support this contention.

Applicant also states that he is not liable for the judgment owed to Credit Union One, because his name was removed as a defendant in the case (Item 4). His evidence is the court docket. Although the docket lists numerous court actions between April and November 2006, none indicate that Applicant's name was removed as a defendant. Applicant's 2007 and 2008 credit bureau reports show he is liable for this debt (Items 7 and 8). Although he states he is not responsible, he states that he made payments on this debt and reduced the balance to \$6,455 (Item 6). Applicant provided no evidence of these payments.

The evidence does not include a payment plan for the Celink debt. Applicant's Personal Financial Statement does not indicate payments being made on any of the SOR debts (Item 6). Applicant did not state whether he has attended counseling.

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 Guidelines, commonly referred to as the "whole person" concept.

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) at AG ¶ 18.

A security clearance decision is intended only 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

³ Directive. 6.3.

⁴ 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.⁵ 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 judgement, 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

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.

Based on the evidence contained in the FORM, the disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*); and AG ¶19 (c) (*a history of not meeting financial obligations*) apply. The credit bureau reports show that Applicant's debts became delinquent around 2005 and 2006, and they still appear on his 2008 reports (Items 6 and 7), showing he has a history of failing to meet his financial obligations. Applicant denies allegation 1.f., a debt to Comcast Cable, for \$85, which became delinquent about 2005 (Item 7). Although it no longer appears on the 2008 credit bureau reports, Applicant offered no documentation showing it has been paid.

Although it is not completely clear from the record why Applicant has failed to pay his debts, he assigns responsibility to his ex-wife for the \$16,000 owed to Celink and My

⁵ See *Egan*, 484 U.S. at 528, 531.

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

Personal Credit Union (Item 6). However, his claim is unsubstantiated, because Applicant did not provide documentation showing which debts were assigned to each party in the divorce.

The following conditions that can potentially mitigate security concerns are relevant: 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;

(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;

(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;

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

(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.

None of the relevant mitigating conditions apply. Applicant's failure to pay his delinquencies did not occur in the distant past, as five of the six debts listed in the SOR still appear in his May 2008 and August 2008 credit reports (Items 6 and 8, respectively) (AG ¶ 20a). The record contains no evidence of financial counseling (AG ¶ 20c).

AG ¶ 20d appears to apply because Applicant claims he made payments on the Credit Union One debt (Item 6) and intends to set up payment arrangements on the Celink debt (Item 4). However, without evidence to support the Credit Union One payments, and with only a promise of future payment on Celink, mitigation is not available under AG ¶ 20d.

The record evidence shows that Applicant disputes his responsibility for the debts owed to Celink Credit Union One, and My Personal Credit Union. He contends that all three are his wife's responsibility (Item 6). However, he provided no evidence to support his contention and AG ¶ 20 (e) cannot be applied.

Moreover, the conflicting nature of Applicant's statements undermine his contention that he is not liable for the debts. Applicant shifts responsibility for the Celink debt to his ex-wife (Item 6), but then later accepts his liability by claiming that he is making arrangements to pay it (Item 4). He states that the My Personal Credit Union debt is his wife's responsibility, but later claims that it is a duplication of the Celink debt

(Item 4). Applicant claims that he is making payments on the Credit Union One debt (Item 6), but in his Answer, he states that he has no responsibility for it because his name has been removed from the judgment (Item 4).

AG ¶ 20 (b) is relevant because the record shows that Applicant experienced unemployment and a divorce, both of which can be conditions that are beyond an Applicant's control and may negatively affect finances. Applicant was laid off for approximately six months at the end of 2003. He did not receive unemployment compensation, but it appears that he did receive disability payments (Item 5). Without further information, the extent to which this period of reduced income affected his finances is unclear. It did occur more than four years ago, and the record indicates Applicant has been employed since then. The effect of his divorce is also unclear. Although Applicant blames his ex-wife for being financially irresponsible about obligations assigned to her in the divorce (Item 6), the negative effect of the divorce on Applicant's finances cannot be deduced from the record. AG ¶ 20 (b) does not apply.

Whole Person Concept

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. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

(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) 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.

Applicant is 54 years old and presumed to be a mature, responsible adult. He has accrued significant debt over the past several years. In response to the government's concerns about his delinquencies, he offered little in the way of mitigation or resolution. Absent such information, the record presents no evidence sufficient to overcome the government's security concerns. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts about his ability or willingness to protect the government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁷

Formal Findings

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

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge