



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-04023
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

January 30, 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 denied.

On August 22, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. 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 August 21, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which

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

raise security concerns addressed in the Revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on November 13, 2008, and I convened a hearing on December 16, 2008. The parties appeared as scheduled. The government presented three exhibits (Gx. 1 - 3). Applicant testified and submitted one exhibit (Ax. A). DOHA received the transcript of hearing (Tr.) on December 29, 2008.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$25,079 for 24 delinquent debts (SOR ¶¶ 1.a - 1.x). Applicant admitted all of the SOR allegations, except for the debt alleged in SOR ¶ 1.x. In addition to the facts entered through Applicant's admissions, I have made the following findings of relevant fact.

Applicant is 29 years old and has been employed by a large defense contractor since June 2005. He and his fiancée live together and are the parents of a six-year-old child. Since July 2007, he has been enrolled in his employer's leadership development program, designed to expose employees with potential for future technical and management expertise to different aspects of the company's business operations. Applicant graduated from college in December 2002 with a degree in transportation logistics. He received a masters degree in the same field from the same university in May 2005. From October 2001 until May 2005, he worked as a collections analyst for a large national bank. (Gx. 1)

In response to e-QIP questions about his finances, Applicant disclosed multiple delinquent debts for personal credit accounts. He also disclosed that his car was briefly repossessed by the bank until he was able to pay the amount past due. (Gx. 1) In response to interrogatories sent to him by DOHA adjudicators, Applicant confirmed the debts attributed to him that were reported in a credit bureau report obtained during his background investigation. (Gx. 2 and 3) However, some of the debts have been reported twice. The credit card debt listed in SOR ¶ 1.d (Citi Financial for \$5,678) is the same account listed in SOR ¶ 1.g (LVNV Funding/Citi Financial for \$6,048). The unpaid medical debt listed in SOR ¶ 1.i (Gulf Coast Collections for \$80) is the same account listed in SOR ¶ 1.h. The unpaid telephone bills listed in SOR ¶¶ 1.a and 1.r (\$886 each to AFNI/AT&T (Bellsouth) and CBCS/Bellsouth, respectively) represent the same account listed in SOR ¶ 1.x. Accordingly, the total amount Applicant actually owes is \$11,501 for 20 accounts. (Ax. A; Tr. 27 - 29)

Applicant has been steadily employed since 2001. His fiancée, however, experienced job layoffs between April and July 2006, between June and September 2007, and between May and July 2008. (Ax. A) Applicant has been trying to reduce

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.

expenses of late. He and his fiancée moved to a new residence in August 2008, which has lowered their rent by about \$200 (Tr. 27), and they have reduced spending on things like internet service, cable television, and other monthly accounts. Applicant's daughter, who has been attending private school, will be moving to a public school in the next school year. (Tr. 55 - 56) A review of Applicant's current finances showed he and his fiancée have about \$786 left each month after expenses. (Tr. 36 - 41)

When Applicant responded to DOHA interrogatories in June 2008, he provided information showing he was aware of his debts and their current status (e.g, balance, which collection firm holds the account, etc.). He also presented information showing he had made minimal payments of \$5 each to most of his creditors, ostensibly to show he had contacted them and would be establishing payment plans. However, his response to interrogatories also included information showing that as recently as June 2008, he was overdrawn on his checking account on multiple occasions. (Gx. 2) At hearing, Applicant presented information showing that in June 2008 he paid off a delinquent retail store account not listed in the SOR, and that in October and November he paid about \$2,000 to satisfy another credit card account not listed in the SOR. (Ax. A)

Applicant intends to begin paying off his debts in a systematic way in 2009. He also asserted he has repayment agreements with 10 of his 20 creditors. However, he presented no information to corroborate his claims or to show that he has made any payments to any of the creditors listed in the SOR since June 2008. (Ax. A; Tr. 41 - 54)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ 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

³ Directive. 6.3.

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 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.

The government presented sufficient information to support all of the allegations in SOR ¶ 1. Even after omitting the duplicate accounts listed in the SOR, he still owes at least \$11,000 for 20 debts, some of which have been delinquent for more than three years. Available information also shows Applicant has not paid or resolved any of the debts listed alleged. He has demonstrated a command of the information about and status of his debts. However, he has not shown why, in light of a positive monthly cashflow in excess of \$700 for the second half of the 2008 calendar year, he has not

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).

paid even his most modest debts (SOR ¶¶ 1.h, 1.i, 1.k, 1.t and 1.w allege debts less than \$100 each). Accordingly, the record 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 has not presented any information that would support application of any of the mitigating conditions at AG ¶ 20. His financial problems are recent, in that they remain unresolved. Despite his obvious understanding of where he stands regarding most of his debts, he has not explained how he came to accrue so much debt. The fact his wife experienced three brief periods of unemployment does not, without more, explain his current circumstances or overall failure to be more proactive in resolving his delinquencies. Accordingly, I conclude Applicant has failed to present information sufficient to mitigate the government's 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). Applicant is 29 years old and appears to be a mature, responsible adult. He has the potential for continued professional advancement through his participation in his company's leadership development program. However, while it bodes well for him that he is well-organized and knows what he has to do to resolve his finances, he has not demonstrated that he will actually do so or that the way he and his fiancée manage their finances will preclude a recurrence of his financial problems. In summary, there is insufficient information for me to conclude that Applicant has satisfied the doubts about his suitability for a clearance raised by his debts. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁷

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
Subparagraphs 1.a, 1.d, 1.i, 1.r:	For Applicant
Subparagraphs 1.b, 1.c, 1.e - 1.k, 1.m - 1.q, 1.s - 1.x:	Against Applicant

⁷ See footnote 7, *supra*.

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