



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



In the matter of:

)
)
)
)
)
)

ISCR Case No. 08-04260

Applicant for Security Clearance

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Deputy Chief Department Counsel

For Applicant: Alexander J. Brittin, Esquire

February 12, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is granted.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) signed on September 25, 2007. 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 July 22, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).²

Applicant signed his notarized Answer to the SOR on August 27, 2008. In his response, Applicant denied all allegations in the SOR except the following: ¶¶ 1.p., 1.q. 1.r. and 1.t. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on September 5, 2008, and the case was assigned to me on September 24, 2008. A Notice of Hearing was issued on October 22, 2008, setting the hearing date for November 12, 2008. After retaining counsel on November 5, 2008, Applicant moved to continue the hearing to allow time to adequately prepare. The Government did not object to Applicant's motion. By Order dated November 7, 2008, I granted Applicant's request. DOHA issued an Amended Notice of Hearing on November 10, 2008, and I convened the hearing on December 10, 2008.

During the hearing, the government offered four exhibits, which were marked as Government's Exhibits (GE) 1 through 4 and admitted without objection. Applicant testified, presented the testimony of one witness, and offered eight exhibits, which were marked as Applicant's Exhibits (AE) A through H, which were also received without objection. I held the record open to allow Applicant to submit additional documentation. He timely submitted 14 documents, which were forwarded without objection by Department Counsel. The documents were admitted as AE I through AE V.³ DOHA received the transcript (Tr) on December 18, 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 Statement of Reasons, and the record evidence, I make the following additional findings of fact.

Applicant, 30 years old, completed tenth grade in approximately 1996. Since that time, he has worked in a fast-food restaurant, as a laborer for a construction company and

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. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Applicant's post-hearing documents, submitted as 1.a. through 4.c., were re-marked in accordance with the DOHA practice of identifying Applicants' exhibits with letters. The revised identification is as follows: 1.a. through 1.e. are re-marked as AE I through AE M; 2.a. through 2.d. are re-marked as AE N through AE Q; 3.a. and 3.b. are re-marked AE R and AE S; 4.a. through 4.c. are re-marked as AE T through AE V. Applicant's cover letter indicated that his post-hearing submission included item 3.d. (*sic*), a letter concerning car repairs of January 2007, but that document was not included in the submission.

as a mover. He joined his current employer in 2003 as a laborer (GE 1; Tr 30-33). Applicant's security officer testified that he is a reliable and dependable worker who has performed his job consistently and well during the years he has been with the company. (Tr 105-106).

Applicant is single. He has three children, aged nine, eleven, and twelve years, with Mother A. Applicant pays \$74 per week in child support for these three children. He also has one child, six years old, with Mother B. He pays \$66 per week support for this child. Child support payments have been deducted automatically from his paycheck since 2005 (Tr 40; GE AE I; AE J). Applicant's pay stub (AE B) shows weekly pay, without overtime, of \$934, or approximately \$48,000 gross income per year. His net income after deductions is approximately \$34,000. He lives with his parents to save money (Tr 90). Nevertheless, Applicant has accrued delinquent debt.

Applicant decided to seek help, and a friend at his church referred him to an agency (Tr 47). In May 2008, Applicant contacted a credit counseling service. He provided the organization with his credit report, so that a plan could be developed that included all his delinquencies (Tr 84). He signed an agreement, and worked out a monthly budget of his income and expenses, and developed a payment plan (GE 4). The original plan required a payment of \$700 per month, which Applicant could not afford. He worked with the agency on a revised plan that he could manage financially (Tr 81). The agency created a revised plan to pay 13 debts over 24 months (AE E; AE T; AE U). Applicant signed the agreement in December 2008. After an initial payment of \$192, Applicant is scheduled to pay \$127.50 per week, or \$510 per month, which will be deducted from his pay (Tr 82).

The current status of the alleged debts is as follows:

Allegations 1.b., 1.c., 1.d, 1.e.,⁴ 1.i., 1.k., 1.l., 1.m., 1.o. - medical debts - Applicant incurred numerous debts because of a medical condition that requires frequent doctor visits (Tr 52-53). He failed to pay these debts because he thought they were being paid through his employer's medical insurance plan. Several of the collection agencies for these debts appear in the plan, although the amounts differ from those cited in the SOR.⁵ Applicant testified that the medical debts are included in his consolidation plan (Tr 52-56; 76; AE E).

Allegations 1.f., 1.h. and 1.n. - communications debts - Two cable debts (1.f. and 1.h.) are included in Applicant's consolidation plan. Applicant disputes the remaining \$170 cell-phone debt. He believes this is not his debt, because his cell phone bill is prepaid (Tr 64; 111).

Allegation 1.j. - car loan - Applicant initially disputed his obligation to pay for this used car because it required several major repairs shortly after he bought it (AE R; AE S;

⁴ The government concedes that allegation 1.e. is a duplicate of allegation 1.b. (Tr 113-114).

⁵ The government noted that, of the allegations related to medical debt, 1.b. and 1.e. were duplicates; 1.k. is included in the plan; and it is unclear if 1.l. and 1.m. were included (Tr 113-115).

Tr 60-61). However, he accepted responsibility for the debt, contacted the creditor and obtained an agreement to a reduced balance of \$5,300. He and the creditor also agreed to a payment plan of \$200 per month for 26 months that started in May 2008 (AE F). Although Applicant's counsel stated that the plan had not been formalized, Applicant testified that he is making the monthly payments. I find that AE F supports Applicant's contention that a plan is in place for this debt (Tr 61-62; AE A; AE F).

Allegations 1.a., 1.g., 1.p., 1.r., 1.s.,⁶ and 1.t. - child support delinquencies, related state liens⁷ and incarceration - In 2003, Applicant was paying Mother A directly, without payroll deductions, but was late in paying. When he did not have the unpaid support on hand at his court appearance, he was incarcerated overnight until the funds were obtained (Tr 50-52).

Applicant disputes that his child support is delinquent because support payments have been deducted automatically from his pay since 2005 (AE B). He submitted copies of court orders showing his child support obligations (AE I and J). In addition, a letter from Applicant's security manager indicates that the company has been deducting child support payments from his pay for both mothers since 2005 (AE H and V).

Although the state instructed that payments for both families be sent to the state division of child support enforcement (AE I and J), Applicant's employer mistakenly sent payments for Mother A directly to her. Child support arrearages began to accrue because the state child support office failed to receive payments for Mother A. Ultimately, the state charged Applicant with failure to meet his obligations and filed liens against him. Applicant contacted the division of child support enforcement to determine why he was charged with failing to pay his support. He could not understand why the receipts that were forwarded to him credited him with only part of the amount he was actually paying (Tr 71). Applicant recently learned that his employer's error, which has continued for several years, has caused the discrepancy (Tr 43). His security officer testified that the situation resulted from a company error, that it was discovered approximately two weeks before the hearing, and that the error has now been corrected (AE H; V; Tr 100-104).

Allegation 1.q. - payday loan - After a judgment was filed against Applicant in 2006, he repaid the loan in full in 2007 (AE G; Tr 65-66).

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

⁶The government concedes that allegation 1.s. is a duplicate of allegation 1.a. (Tr 120).

⁷Directive. 6.3.

Guidelines (AG).⁷ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

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).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁸ 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.⁹ 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.¹⁰

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

⁸ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

security concern. It may indicate proceeds from financially profitable criminal acts.

Applicant has worked as a laborer for more than 10 years. His credit bureau reports show that he has had numerous delinquencies, which began accruing in 2003. Disqualifying conditions AG ¶19a (*inability or unwillingness to satisfy debts*) and AG ¶19c (*a history of not meeting financial obligations*) apply. There is no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains factors that can mitigate security concerns. Mitigating conditions AG ¶ 20b, AG ¶ 20c, AG ¶ 20d, and AG ¶ 20e apply.

Applicant's largest alleged debt relates to child support arrearages. However, the delinquencies resulted not from Applicant's failure to pay his obligation, but from his employer's failure to follow the state's instructions to send Applicant's payments to the state division of child support enforcement. His employer's mistake was unknown to Applicant and beyond his control. He acted responsibly by contacting the state office and obtaining receipts of his payments to try to determine why his payments were not being credited to him. I find that AG ¶ 20b applies (*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*).

Both 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*) and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply. Applicant has made sincere efforts to resolve his debts. He initiated a payment plan for his car loan, even though the car appeared to be a "lemon." He acted in May 2008, before the SOR was issued, indicating that he was acting in good-faith, rather than in response to the security process. His history of child support payments going back to 2005 also shows a good-faith effort to meet his obligation to support his children. In addition, Applicant contacted a financial counseling service in May 2008 and concluded a payment plan in December. The payment plan includes 13 debts, 9 of which appear in the SOR (AE E). Not all of the medical debts listed in the SOR are included in the plan; however, the medical debts that do not appear to be included are not sufficient to raise security concerns. Applicant has made a concerted effort to resolve his debts and with this payment plan in place, his debts are under control.

Applicant's exhibits (AE B - D; AE H - L; AE V) and his security officer's testimony confirm that the child support debts listed in the SOR stemmed from an error by his employer that has continued for almost four years. Applicant's child support had in fact been deducted from his pay during that time, and arrears should not have been accruing. I find that AG ¶ 20(e) applies (*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).

Whole Person Analysis

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. An administrative judge should consider the nine adjudicative process factors listed at 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole person concept. Under the financial considerations guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has a stable work history and his security manager attests to his reliability as an employee. In the process of supporting himself and four children on his single salary as a laborer, he incurred delinquencies amounting to approximately \$10,000. The SOR alleges \$31,200 in delinquent debt (excluding duplicate allegation 1.s.). However, of this total, Applicant does not owe \$21,245 in child support arrears, which the state child support enforcement division charged as delinquent because of a mistake by Applicant's employer. He made good-faith efforts to resolve the remaining debts by initiating a payment plan for his automobile loan, seeking counseling, and establishing a reasonable payment plan under which payments on his remaining debts will be deducted from his salary.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F

For Applicant

Subparagraph 1.a. - 1.t.

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge