



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



In the matter of:)
)
) ISCR Case No. 08-04676
)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro Se*

December 11, 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 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) on October 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.

On July 10, 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 In his Answer to the SOR,³ signed and notarized on August 27, 2008, Applicant admitted to the allegation at ¶1.a. and denied the remaining allegations at ¶¶1.b. through 1.i. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on September 23, 2008, and the case was assigned to me the following day. DOHA issued a Notice of Hearing on October 22, 2008 and I convened the hearing as scheduled on November 13, 2008.

During the hearing, the government offered five exhibits, marked as Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified, and offered 22 exhibits as well as the testimony of one witness. Applicant's Exhibits (AE) were marked as A through U, and admitted without objection. I held the record open to allow Applicant to submit additional documentation. Department Counsel forwarded without objection Applicant's timely submission of three additional pages to be added to AE G, and a two-page document related to allegation 1.i. I admitted the additional document as AE V. DOHA received the transcript on November 21, 2008, and the record closed on that day.

Findings of Fact

Applicant's admission to allegation 1.a. is 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, 42 years old, graduated high school and completed several college courses (Tr. 4-5). He married for the first time in 1992 and divorced in 1997. He has two children from his first marriage, a son 14 years old and a daughter 13 years old (GE 1). Both children live with their mother in State B. He has been paying child support since 1999

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

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 attached the following eight documents to his Answer: 1: 1998 Chapter 7 Bankruptcy Petition; 2: IRS Release of Levy, 2003; 3: State A child support summary statement; 4: State B child support payment documents; 5: power company debt document; 6: Ford Motor Company debt document; 7: medical debt document; 8: AT&T debt document.

(Answer document 4). Applicant married his current wife in 1997, and they live in State A. His supervisor characterizes Applicant as an ethical person who car-pools to work and exhibits no indication of living an exorbitant lifestyle (Tr. 14-15).

Applicant was employed as an engineer for defense contractors since 1999, except for one six-month period of unemployment in 2005 (GE 1). His annual income over the past eight years has fluctuated. In 2000 and 2001, he earned more than \$200,000 (AE D). Since then, his income has decreased to \$149,000 in 2003, and \$119,000 in 2004. In 2005, when he was unemployed, his gross income was \$37,486. The following year, it increased to \$87,000, and in 2007, his gross income was \$104,390 (AE H). As of August 2008, Applicant earns \$8,692 per month. He has owned a rental property for the past four years, which returns \$1,250 in rental income. These two income sources result in a monthly gross income of \$9,942; after expenses, his net monthly remainder is \$2,471. His annual income for 2008 will be approximately \$119,000 (AE Q; U).

The Statement of Reasons alleges eleven debts. Applicant provided documents showing that his 1998 bankruptcy (allegation 1.a.) was discharged (AE A; Answer document 1). His exhibits showed the current status of the alleged debts as follows:

- **Child support and arrearages:** debt to State A Division of Child Support Enforcement (allegations 1.c. and 1.d.) and State B Division of Support Enforcement⁴ (allegation 1.e.): Applicant has been paying on his support and arrearages since 1999. His debt increased significantly in 2005, when his obligation was re-assessed for the three previous years and \$27,700 was added in arrearages. As of July 2008, he had reduced this arrearage to \$10,871. He paid his child support obligation during his unemployment of January to June 2005 (AE I, J, K; Answer documents 2 and 4);
- **power company** debt (allegation 1.f.): Paid (AE L; Answer document 5);
- **oil company debt** (allegation 1.g.): As of September 2008, Applicant owes \$1,228; he has made two payments under his payment plan of \$100 per month (AE P; Answer document 5);
- **Ford Motor Company** (allegation 1.h.): As of November 2008, he has made nine payments (including one of \$4,253) for a total of \$5,055 (AE M; Answer document 6);

⁴ Applicant's child support is paid to State A Division of Child Support Enforcement, which then transfers the funds to State B, where Applicant's children reside.

- **credit union debt** (allegation 1.i.): the debt was discharged in 1998 bankruptcy (AE A; Answer document 1);
- **medical debt** (allegation 1.j.): Paid (AE N; Answer document 7);
- **Palisades/AT&T** (allegation 1.k.): Applicant disputes the debt and has informed the attorney who is handling collection (AE O; Answer document 8);
- **CBCS** (allegation 1.l.): Paid (AE V).

As to the federal tax lien (allegation 1.b.), the record evidence supports the following. The Internal Revenue Service (IRS) informed Applicant in March 2003 that a tax levy on his salary had been released (Answer document 2). In May of the same year, the IRS recalculated Applicant's 2000 tax return and determined that he had underpaid his taxes and that the underpayment, along with penalties and interest, amounted to \$28,141. In addition, the IRS found that he had made an error in his 2001 return and owed an additional \$16,357 for that tax year (AE B). The two errors resulted in a debt of \$44,498. Applicant proposed a payment plan to the IRS in September 2003. The plan called for \$1,000 per month to be garnished from Applicant's salary and future refunds to be applied to his tax debt (AE G). Applicant testified that he paid approximately \$13,000 toward the debts through garnishment, and that he had approximately \$17,000 in tax refunds (Tr. 43; 68).

In September 2004, Applicant informed the IRS that he was about to be laid off from his job. In response, the IRS issued a Notice of Federal Tax Lien showing that Applicant owed \$40,733.47 for tax years 2000 and 2001 (Tr. 37; AE F). Applicant's tax returns for 2002 through 2007 indicate he was due refunds (AE D). The refunds for 2005 through 2007, totaling \$6,495, were credited toward his debt (AE H).

After being unemployed for six months, Applicant found employment in July 2005, and tried to re-establish the payment plan. However, the IRS determined that the 2000 and 2001 back taxes should be classified as "unrecoverable" because Applicant was earning a lower salary than previously. Applicant's salary has not been garnished since that time (Tr. 38).

Applicant contacted the IRS in July of this year, and then every week in September, October and November to determine the current status of his account. Three days before the hearing, he was informed that his account was still under review. The day before the hearing, he visited the IRS personally, obtained a printout of his account (AE H) and was told the debt for tax years 2000 and 2001 is still classified as "unrecoverable." AE H indicates that Applicant's account shows a credit of \$9,358 for tax year 2004, and overpayments (refunds) that were transferred as follows: \$2,954 for tax year 2005; \$2,648 for tax year 2006; and \$893 for tax year 2007. However, he was informed that some refunds have been applied and some have not. Applicant has obtained the paperwork to enter into a new agreement to deduct payments from his salary, which he hopes he will be able to do within a few weeks following the hearing. (Tr. 39-42).

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).⁵ 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 interest⁶ 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.⁷ 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 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.⁸

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

³ Directive. 6.3.

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).

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.

Disqualifying condition AG ¶19a (*inability or unwillingness to satisfy debts*) applies. Applicant's income has fluctuated significantly over the past several years, and he was unemployed for six months in 2005. His income decreased from more than \$200,000 in 2001 to \$37,500 in 2005. At the same time, his other expenses continued. His child support was significantly increased in 2005, the year he was unemployed. All of these factors contributed to Applicant's inability to pay his debts. AG ¶19c (*a history of not meeting financial obligations*) also applies. Applicant's credit bureau report shows that he has had several substantial delinquencies over the past five years (GE 2), demonstrating a history of failing to meet financial obligations. 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 and AG ¶ 20d apply.

I find, and the government agrees (Tr. 105), 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*). Applicant's income declined steadily over several years, dropping almost 50 percent between 2002 and 2004. Following this decline, Applicant experienced six months of unemployment in 2005, earning only one-fifth of his 2002 income. When he found employment, his income was not at the previous levels, and it has not returned to the level he was earning between 2000 and 2002. Despite these financial setbacks, he acted responsibly and continued making his child support payments (AE I).

Applicant has paid the debts to the power company, and CBCS, as well as the medical debt. He has established a payment plan for the debts to the oil company and Ford Motor Company. Applicant disputes the debt to Palisades/AT&T and has informed the debt collector. The judgments owed to the credit union were discharged in his bankruptcy 10 years ago. Although he does have arrearages in his child support, his payments have reduced the arrearages by approximately \$17,000 in the past 3 years (Answer document 3). The record evidence supports his contention that he has been meeting this obligation consistently for almost 10 years, including the period when he was unemployed.

Applicant's underpayment of federal income tax in 2000 and error on his 2001 return resulted in the IRS issuing a lien against him and assessing interest and penalties in 2003. Soon after the lien was issued, Applicant contacted the IRS and established a plan to pay \$1,000 per month through deductions from his salary. Any tax refunds would also be credited to pay his debt. However, following his unemployment in 2005, the IRS would not re-institute the wage garnishment because of his significantly lower salary. It appears that through the earlier payments, and the transferred refunds, he has paid more than half of the IRS debt. Applicant credibly testified that he has persistently endeavored to work with the IRS to resolve the situation. I find that all of these facts, and the record evidence, support application of both AG ¶ 20c (*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 ¶ 20d (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

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 each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued significant debt over the past several years. His financial problems resulted largely from a steady decline in his income, followed by unemployment. However, he has paid several smaller debts, and set up payment plans for two larger debts. Over more than nine years, he consistently met his obligation to support his children. Throughout a difficult problem with the IRS, he acted with reason and maturity. Applicant's well-documented efforts demonstrate a sincere intent to meet his financial obligations. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has satisfied the doubts about his ability or willingness to protect the government's interests.

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.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	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