



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



In the matter of)	
)	
)	ISCR Case No. 08-04680
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel

For Applicant: *Pro se*

September 22, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on 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 30, 2006, Applicant submitted a security clearance application (Standard Form 86) to request a security clearance required as part

of his employment 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 grant Applicant's request.

On March 17, 2009, 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).² In his Answer to the SOR, signed and notarized on April 27, 2009, Applicant admitted all the allegations under Guideline F except subparagraph 1.p. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on May 18, 2009 and the case was assigned to me on May 27, 2009. DOHA issued a Notice of Hearing on June 3, 2009, and I convened the hearing as scheduled on July 1, 2009. During the hearing, the government offered five exhibits, marked as Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified, and did not offer exhibits or witness testimony. I held the record open for Applicant to submit additional documentation in support of his case. He timely submitted one document, admitted without objection as Applicant's Exhibit (AE) A. DOHA received the transcript on July 10, 2009.

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 evidence presented by both parties, I make the following additional findings of fact.

Applicant, 29 years old, is a high school graduate who completed approximately one semester of community college in 1998. He is single and has three children between the ages of seven and nine years. All three children live with their mothers. Applicant served in the U.S. Army from 1999 to 2003, and detached at pay grade E-4. He currently serves in the active reserves. He did not hold a security clearance while in the military and does not currently hold one. Appellant was unemployed for about 11 months in 2003 to 2004, after leaving active duty, and received unemployment compensation. He was again unemployed from approximately November 2005 to November 2006, but earned

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.

about \$1,800 for part-time reserve duty from April to November 2006. He did not receive unemployment compensation during this period. He lived with his family when he was unemployed. For the past two-and-one-half years, he has worked for a defense contractor as a security officer, which primarily involves building access control. Applicant also holds a part-time job with an agency that provides counseling for inner-city youth (GE 1; Tr. 21-22, 82, 84-85, 88, 92-93, 96).

Applicant earns an annual salary of approximately \$54,000. After taxes, child support and other deductions, his monthly net take-home pay is approximately \$1,260. He also earns approximately \$138 per month net from a part-time job counseling youth, and about \$230 per month from reserves. Applicant shares living expenses with a roommate. His monthly expenses include \$550 rent, \$100 utilities, \$182 car insurance, \$120 gas, \$60 groceries, and \$150 in extra expenses for his children. He purchased a 2006 car in 2007, for which he pays \$389 per month. He has about \$300 in a checking account and about \$200 in savings. He has no investments or retirement plans, and no credit cards. His monthly net remainder is approximately \$50 (GE 2; Tr. 84, 98-114).

Applicant accrued significant delinquencies since 2000. He attributes his financial problems to being young and foolish. In 2008, Applicant talked twice with a debt consolidation service that offered to work with him on debt management, a budget, and a payout plan that required him to pay a certain amount, which the company would pay to the creditors. It also charged a fee in addition to the amount he was required to pay toward each debt. In addition, he was required to contact the creditors himself, and he had found it difficult to reach them. Applicant also did not follow through with the company because it advised him that the best approach would be to file a bankruptcy petition. He did not wish to file bankruptcy for \$15,000, which he considered to be a small amount of debt. (GE 3; Tr. 64-70, 98).

Applicant's debts, as alleged in the SOR, total \$14,660. In his interrogatory responses of July and October 2008, Applicant indicated that he had contacted numerous creditors and set up payment plans with some. He also included copies of checks he wrote to 15 creditors. However, he did not mail these checks because he needed the money for an unexpected death in his family (GE 2, 3, 4, 5; Tr. 64). The status of the SOR debts follows.

- **Auto loan — \$6,566** (allegation 1.a.) – Unpaid. Applicant was in an accident and his car was a total loss. He stopped making loan payments. The debt has been delinquent since 2004. In February 2009, Applicant contacted the creditor, who offered a lump-sum settlement of \$3,000. Applicant testified that he has saved \$1,500 toward the payment, but offered no documentation to support his claim of a settlement offer or his savings (Tr. 22-25).

- **Communications (debts related to cell phones and land lines) - \$1,934** (allegations 1.c., 1.i., 1.j., and 1.l.): Unpaid. Applicant testified that he is unsure whether the debt at 1.c. is his debt. He has not contacted the company or disputed it with the credit reporting agencies, and it remains unpaid. He contacted the creditor alleged in 1.i. in February 2009 for information about paying the debt, but has not paid it. He has not contacted the creditor alleged in 1.j. He does not recognize the debt alleged in 1.l., but has not contacted the creditor or the credit reporting agencies to dispute it (Tr. 28-29, 39-43).
- **Utilities - \$326** (allegation 1.d.): Unpaid. Applicant contacted the creditor in approximately February 2009 to get information about how and where to pay the debt but does not have sufficient funds to pay it (Tr. 30-31).
- **Retail store - \$291** (allegation 1.e.): Unpaid. Applicant has not contacted the creditor concerning this debt (Tr. 31-32).
- **Rent - \$1,166** (allegation 1.h.): Unpaid. In 2004, Applicant notified the rental agent that he was leaving his apartment within two weeks. He left before the term of the lease ended because a person was murdered in the parking lot. He was penalized approximately three months' rent. He has not contacted the creditor (Tr. 36-39).
- **Credit cards - \$2,235** (allegations 1.b., 1.f.): Unpaid. The account listed at allegation 1.b. became delinquent in 2002. Applicant stopped making payments on the account. He contacted the creditor sometime before February 2009 but was told his account was transferred to an unknown collection company. Allegation 1.f. relates to a store credit card. Applicant tried to reach the creditor in February 2009 but the number did not work and he believes that the company no longer exists. He did not investigate further (GE 4, 5; Tr. 25-28, 32-34).
- **Tax-related debt - \$146** (allegation 1.g.): Unpaid. Applicant does not recognize this debt. He has not contacted the credit reporting agencies to dispute it (Tr. 34-36).
- **Medical debts - \$759** (allegations 1.k., 1.m – 1.o.): Unpaid. These debts relate to medical expenses for Applicant's children. He has not contacted the creditors. (Tr. 41-46).
- **Federal agency - \$1,247** (allegation 1.p.): Partially paid. Applicant owed the agency for a class from which he withdrew. In April 2008, he filed his 2006 income tax return late, with his 2007 federal income tax return. He was owed income tax refunds of \$637 for tax year 2006, and \$3,641 for tax year 2007, as well as a \$600 economic stimulus check. Although Applicant's July 2009 credit bureau report shows that he still owes \$1,247, Applicant provided documentation showing that he owes less. The federal

agency seized \$637 from his 2006 federal income tax refund, and \$467 from his 2007 economic stimulus check, and applied both to pay the debt, leaving a remainder of \$142.³ Applicant testified that he spoke with the agency twice and confirmed that he no longer owes the remaining amount, but provided no documentation to support that contention (GE 3; AE A; Tr. 46-55).

Policies

Each security clearance decision must be a fair, impartial, and common-sense 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 Guidelines, commonly referred to as the “whole person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine 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 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

³ Applicant currently owes back child support of approximately \$5,000 for one of his three children. The state that collects this child support seized \$132 from his 2007 stimulus check and \$3,641 from his 2007 income tax refund to pay back child support. Applicant's pay is garnished to pay child support. The child support arrearages are not alleged in the SOR (GE 3; Tr. 55-59).

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.

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 judgment, reliability and trustworthiness to 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.⁷

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about 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.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). Applicant owes approximately \$14,000 in delinquent debt that he has been unable or unwilling to pay. His debts became delinquent starting in 2000, and, but for one that is partially paid, they remain delinquent, indicating a history of failure to meet financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

- (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;

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

(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;

(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.

Applicant's debts have been accruing since approximately 2000, and they did not occur under unusual circumstances. He has now been employed full-time for the past two-and-one-half years, and he earns income from a part-time job as well as reserve pay. Applicant testified that he saved \$1,500, yet he did not use this money to pay any of his delinquencies, which raises questions as to his judgment. AG ¶ 20(a) does not apply.

Applicant experienced some periods of unemployment between 2003 and 2006. However, his family assisted him financially during this period by allowing him to live at home. Applicant has not acted responsibly to deal with his significant debts. He purchased a new or relatively new 2006 automobile in the spring of 2007, and he now pays almost \$400 per month on that vehicle. In addition, on the day he submitted his Interrogatory response (GE 2), he wrote checks to numerous creditors, but he did not mail the checks because he needed the funds for a family emergency. Finally, he testified that he has saved a substantial amount – \$1,500 – but has not used these funds to make payments on his delinquent debts. AG ¶ 20(b) cannot be applied.

Neither AG ¶ 20(c) nor AG ¶ 20(d) applies. Applicant was on notice that delinquent debts were a security concern after he completed his security clearance application in 2006. He did make some effort at obtaining help with his finances by contacting a debt consolidation company two years later, in 2008. However, he did not follow through with that company's advice and made no further efforts to obtain financial assistance. Moreover, Applicant's financial situation is not under control. Although the debt to the federal agency is partially paid, he still owes more than \$13,000. This debt was not paid through Applicant's good-faith efforts, but by the agency's seizure of Applicant's income tax refunds and stimulus check. The rest of the SOR debts are unpaid, with no payment plans in place, and no documentation to support his claims of contacts with the creditors. Without documentation of payments or payment plans, a good-faith effort to resolve debts cannot be substantiated.

Applicant disputes the three debts at ¶¶ 1.c., 1.g., and 1.i. He provided no evidence to support his claim and has not contacted the creditors or credit reporting agencies to report the disputes. AG ¶ 20(e) does not apply. I find against Applicant under Guideline F.

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 relevant 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) 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.

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

As Applicant was in his twenties at the time most of his debts became past due, his failure to respond to them may have resulted in part from inexperience and a lack of sound financial judgment. However, several questionable decisions were made more recently--to take on a substantial car payment in 2007 and to ignore the advice of the debt consolidation company. The only debt that is substantially paid was resolved not through his good-faith efforts, but through the government's seizure of his income tax refunds and stimulus check. He has not set up payment plans or provided evidence to support his contacts with creditors. An applicant is not required to be debt-free, or establish that he paid every debt. But he must demonstrate that he established a plan to resolve his debts and has taken significant action to implement that plan. Here, Applicant has not established such a plan, and he still carries more than \$13,000 in debt, with no substantive efforts to resolve his financial situation.

