



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



In the matter of:)
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 SSN: -----) ISCR Case No. 08-04904
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 Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

April 8, 2010

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's request for eligibility for a security clearance is denied.

On October 8, 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 Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent two sets of interrogatories to Applicant to clarify or augment information in his background.¹ After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary

¹ Authorized by DoD Directive 5220.6, Section E3.1.2.2.

affirmative finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On April 23, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ under Guideline F (financial considerations) and Guideline E (personal conduct).

On October 13, 2009, Applicant responded to the SOR and requested a decision without a hearing. On January 5, 2010, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the Government's preliminary decision. Applicant received the FORM on January 13, 2010, and was given 30 days to file a response to the FORM. Applicant did not submit a response before the deadline, and the case was assigned to me on April 2, 2010.

Findings of Fact

The Government alleged that Applicant filed for Chapter 13 bankruptcy protection in April 2001 (SOR ¶ 1.a); and that he owes approximately \$21,642 for 14 delinquent or past-due debts (SOR ¶¶ 1.b - 1.o). Applicant admitted these allegations. (FORM Item 6)

The Government also alleged that, in response to e-QIP question 27.b (*In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?*), he answered "no," thereby deliberately omitting that his car was repossessed in January 2007 as alleged in SOR ¶ 1.j (SOR ¶ 2.a); that, in response to e-QIP question 28.a (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*), he answered "no," thereby deliberately omitting the fact that he owes the debts alleged in SOR ¶¶ 1.b - 1.l (SOR ¶ 2.b); and that, in response to e-QIP question 28.b (*Are you currently more than 90 days delinquent on any debt(s)?*), he answered "no," thereby deliberately omitting the fact that he owes the debts alleged in SOR ¶¶ 1.b - 1.o (SOR ¶ 2.c). Applicant admitted that he answered "no" to these questions, but stated that he made a mistake in answering as he did. These responses are entered as denials. In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is 54 years old and is employed by a defense contractor in a job that requires him to have a security clearance. He and his wife have been married since July 1991. He did not list any children in his e-QIP. (FORM, Item 7)

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ Adjudication of this case is controlled by the 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, these guidelines take precedence over the guidelines provided in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included 11 documents (Items 1 - 11) proffered in support of the Government's case.

Applicant has experienced financial problems since at least April 2001, when he and his wife filed for Chapter 13 bankruptcy protection. They paid \$700 each month until January 2005, when the debts contained in the petition, which totaled about \$39,000, were discharged. (FORM, Item 7; FORM, Item 8; FORM, Item 9)

Since December 2004, Applicant has amassed more than \$21,000 in delinquent or past-due personal debt. The majority of this amount consists of a \$10,896 debt (SOR 1.j) for the remainder after resale of a car that was repossessed in January 2007. (FORM, Item 8; FORM, Item 10; FORM, Item 11) When he was interviewed for his clearance by a government investigator in January 2008, he acknowledged the debts in his credit history and attributed his current problems to the fact that he was, until recently, the sole income earner. He also averred that when he and his wife filed Chapter 13 bankruptcy, the required monthly payment further strained their finances. He apparently regrets not filing for Chapter 7 liquidation of his debts. However, Applicant also admitted that he has no excuse for most of his debts. (FORM, Item 8)

Applicant submitted a personal financial statement (PFS) as part of his response to interrogatories. Based on the combined net monthly income of Applicant and his wife, after paying monthly expenses (including about \$540 to five debts not listed in the SOR), he has about \$2,311 remaining. Applicant provided with his answer to the SOR documents showing he enrolled in a credit repair program in April 2009. However, he has not provided information showing that he is making regular payments to any of the debts in the SOR. It is not clear if the credit repair program also provides Applicant with financial counseling or other assistance in resolving his past-due debts.

In his October 8, 2007, e-QIP, Applicant listed his Chapter 13 bankruptcy but did not list any of the debts reported through his background investigation. When he was interviewed for his security clearance, Applicant acknowledged responsibility for most of the debts in the credit report the investigator showed him. (FORM, Item 7; FORM, Item 8)

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 adjudicative guidelines.⁵ 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 factor 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

⁵ Directive. 6.3.

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 information. In this case, the pleadings and the information presented by the parties require consideration of the security concern and adjudicative factors under AG ¶ 15 (Guideline E- Personal Conduct) and AG ¶ 18 (Guideline F - financial considerations).

A security clearance decision is intended to resolve 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. 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 national interest.⁸

Analysis

Financial Considerations

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The information in the FORM, along with Applicant's unqualified admissions, supports the allegations in SOR ¶¶ 1.a - 1.o. Further, according to the credit reports

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

provided, the debts alleged became delinquent as far back as October 2005. Available information 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 did not provide before the deadline to respond to the FORM any information that would mitigate or extenuate the adverse security implications of the Government's information. Applicant's submission with his answer to the SOR shows only that he has subscribed to a credit repair service. It does not show that he has paid or is paying his debts, despite the fact that he has a significant positive monthly cash flow that would allow him to pay more than his PFS showed. Further, his information does not show that he is receiving any financial advice or debt counseling to improve the way he manages his finances. Accordingly, none of the mitigating conditions listed at AG ¶ 20 apply, and the security concerns about Applicant's finances remain unchanged.

Personal Conduct

The Government alleged (SOR ¶¶ 2.a, 2.b, and 2.c) that Applicant deliberately falsified his answers to three questions in his e-QIP that asked him to disclose if he had property repossessed in the last seven years or if he had any debts more than 180 or 90 days past due. The security concern raised by these allegations, as stated at AG ¶ 15, is that:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Although he admitted answering "no" to those questions, he denied the gravamen of the allegations; namely, that he intended his answers to deceive or mislead the government. By denying these allegations, Applicant placed on the Government the burden of "presenting witnesses and other information to establish facts that have been controverted." (Directive, E3.1.14)

Aside from the e-QIP (Gx. 1) that shows he answered "no" as alleged, there is no information that directly shows that Applicant intentionally provided false answers as alleged. However, the totality of available information supports a conclusion that he did so. The summary of his January 2008 subject interview shows that Applicant did not recognize a number of the debts listed in a credit report the investigator showed him. But he specifically knew about his repossession and that he owed many other debts that arose after his Chapter 13 bankruptcy was discharged in 2005. It can also be reasonably inferred that he knew when he completed the e-QIP that he was at least 90 or 180 days past due on most of his debts. In light of all of the information about his debts, Applicant's claim that he did not disclose his debts because he checked the wrong box is insufficient. Based on all of the foregoing, I conclude that the disqualifying

condition at AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. At the very least, he could have answered “yes” to any one of the questions at issue, thereby putting the government on notice that his finances after his Chapter 13 bankruptcy might be a concern.

By contrast, Applicant presented no information that shows he tried to correct his omissions before his interview, or that his answers were given according to erroneous advice from an otherwise qualified source. Accordingly, the mitigating conditions at AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and AG ¶ 17(b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully*) do not apply.

Applicant’s false statements in his e-QIP were made recently and constitute a significant offense in terms of the government’s ability to manage its personnel security program. Accordingly, the mitigating condition at AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment*) does not apply.⁹ On balance, I conclude he has failed to mitigate the security concerns about his personal conduct.

Whole Person

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, a 54-year-old defense contractor, is presumed to be a mature, responsible adult. He and his wife have been married for over 18 years, and he appears to have a consistent record of steady employment during that time. However, without additional information about his judgment, reliability, and trustworthiness, positive inferences to be drawn from his age and his stable employment history are not enough to overcome the security concerns about his recent delinquent debt that arose despite a bankruptcy petition completed less than six years ago. A fair and commonsense assessment¹⁰ of all available information creates doubts about Applicant’s suitability to hold a clearance that his response has

⁹ The mitigating conditions at AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) and AG ¶ 17(f) (*association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations*) are inapposite here.

¹⁰ See footnote 5, *supra*.

not adequately addressed. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.¹¹

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.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

¹¹ See footnote 8, *supra*.