



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



In the matter of:)
)
) ISCR Case No. 08-05811
)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel

For Applicant: *Pro se*

December 8, 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.

On May 21, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP SF-86) to request a security clearance required as part of his employment with a defense contractor (Item 5). 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 August 15, 2008, 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).

Applicant received the SOR on August 19, 2008 (Item 3). He submitted a notarized Answer, dated August 28, 2008 (Item 4), along with supporting documentation. In his Answer, he admitted to SOR ¶¶ 1.a through 1.g., but neither admitted nor denied SOR ¶ 1.h. Applicant also requested a decision without a hearing.

On October 2, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM)² in support of the government's preliminary decision. Applicant was given 30 days to file a response to the FORM, but did not reply. The case was assigned to me on November 19, 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 SOR, and the FORM, I make the following additional findings of fact.

Applicant is 49 years old and employed by a defense contractor. He and his former spouse have two daughters, 11 and 21 years old (Items 5 and 6) . According to his Security Clearance Application of May 2007, he worked at a series of correctional facilities from 1986 to 2003, holding positions as a Correctional Supervisor and Chief of Security. He was unemployed for six months in 2001 and two months in 2003 (Item 6). After his unemployment in 2003, he obtained a position as a Correctional Supervisor, which he held for three years. He was hired by his current employer in June 2006 and submitted his Security Clearance Application approximately one year later (Item 5).

Applicant's monthly income is \$1,943, or about \$23,300 annually (Item 6).³ After paying expenses of \$1,819, he has of monthly net remainder of \$124. In his Answer of August 2008, he states that his financial situation has improved, his house sale is to be completed in September, and he is now able to save \$200 per month.

The SOR alleges seven debts that became delinquent between 2003 and 2008 (Items 7 and 8), amounting to \$37,195. One of Applicant's debts (unalleged) was related to a timeshare purchase from Bluegreen. It became delinquent after Applicant's wife did not make the scheduled payments, and failed to inform Applicant of her actions. Applicant decided to pay off this large debt using credit cards from Chase, Bank of

² See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the government's case.

³ Applicant did not indicate whether this figure represents his gross or net monthly income.

America, Sears, and Discover (Item 6), which contributed to the overdue balances shown in allegations 1.b., 1.d., 1.f., and 1.g.

Applicant provided documentation regarding the current status of each debt (Item 4). Allegation 1.a., the debt to Network/Singing River, is for utilities in the house where his former spouse lives. She has taken responsibility for the debt by setting up a payment plan with the creditor, but has made no payments to date (Item 4, A-1). Applicant paid the debt to Chase (allegation 1.b) in June 2007 (Item 4, B-1). The accounts with HSBC/Best Buy (allegation 1.c.) and Sears (allegation 1.f.) are closed. Applicant contacted the creditors, who informed him that the credit reporting agencies will be instructed to delete the accounts from Applicant's credit reports (Item 4, C-1 and F-1, respectively). According to correspondence from West Asset Management, the collection agency for Bank of America (Item 4, D-1), Applicant paid this debt (allegation 1.d.) in July 2007. Applicant also provided evidence that he paid the debts owed to Chevron (allegation 1.e.) and Discover (allegation 1.g.) (Item 4, E-1 and G-1, respectively).

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).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 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) at AG ¶ 18.

A security clearance decision is intended 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.

⁴ Directive, ¶ 6.3.

⁵ See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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 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 judgement, 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.⁷

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

Disqualifying condition AG ¶19a (*inability or unwillingness to satisfy debts*) applies. Applicant was unemployed for six months in 2001. When he obtained employment again, between 2001 and 2005, he was married and supporting a family of four, apparently on a relatively low salary (Item 6). 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 reports show that he has had numerous delinquencies over the past five years (Items 7 and 8). By August 2008, when the SOR was issued, Applicant owed a total of \$16,570,⁸ demonstrating a history of failing to meet financial obligations.

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

⁶ See, *Egan*, 484 U.S. at 528, 531.

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

⁸ This total does not include the Chase debt (\$15,125) and the Bank of America debt (\$5,500) which Applicant paid in 2007, more than one year before the Statement of Reasons was issued (Item 4, B-1 and D-1).

Although Applicant's credit report (Item 8) shows he is liable for the \$730 owed to Network/Singing River (Item 4), he provided documentation that his former wife has assumed responsibility for the debt, contacted the creditor, and established a payment plan. The documentation indicates that as of August she had not started payments (Item 4). But even if she does not follow through, and Applicant is responsible for this debt, the relatively small balance is insufficient to raise security concerns. The fact that only this single debt remains unresolved indicates that Applicant's financial situation is under control, supporting application of 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*).

AG ¶ 20d (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) also applies because Applicant has not only made a good-faith effort to resolve his debts, but has in fact resolved six of the seven debts. He paid two sizable debts in 2007 (Bank of America and Chase). Payment of substantial debts more than one year before the Statement of Reasons was issued shows that his efforts to deal with his financial situation were not simply a response to the security clearance process, but a sincere effort to meet his financial obligations. Since then, he has paid two other debts (Chevron and Discover). He has also been assured by the two remaining creditors (HSBC/Best Buy and Sears) that his closed accounts will be removed from his credit reports.

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 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) 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.

Applicant accrued significant debt over the past several years. His financial problems resulted from a combination of events—unemployment, a spouse who did not inform him of her failure to make payments, and a poor decision to pay a large debt with credit cards. However, he paid two large debts more than one year ago, so that when the SOR was issued in 2008, he owed less than half the amount of delinquencies alleged. Moreover, in response to the government's concerns about his remaining delinquencies, he provided documentation showing that he has resolved all but one of the debts. Applicant's documented efforts over the past year have demonstrated a

sincere effort to meet his financial obligations and have been successful. Indebtedness is no longer a security concern. 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.

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 as follows:

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

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge