



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-06005
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Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, the government’s exhibits (Gx.), Applicant’s exhibits (Ax.), and Applicant’s testimony, his request for a security clearance is granted.

On November 16, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor.¹ 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 finding² that it is clearly consistent with the national interest to allow Applicant access to classified information. On January 15, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which

¹ Applicant also requires a security clearance as part of his duties in the U.S. Army National Guard.

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

raise security concerns addressed in the revised Adjudicative Guidelines (AG)³ under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on February 23, 2009, and I convened a hearing on April 2, 2009. The parties appeared as scheduled. The government presented five exhibits included in the record without objection as Gx. 1 - 5. Applicant testified and submitted one exhibit admitted without objection as Ax. A. Additionally, I left the record open after the hearing (Tr. 62) to receive additional relevant information. The record closed on April 9, 2009, when I received Applicant's post-hearing submission, which has been admitted without objection as Ax. B. DOHA received the transcript of hearing (Tr.) on April 10, 2009.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$32,360 in delinquent debt. More specifically, it was alleged he owes approximately \$14,538 in unpaid child support (SOR ¶ 1.a), approximately \$14,009 for payments on a home mortgage account more than 120 days past due (SOR ¶ 1.b), and approximately \$3,813 for payments on a second mortgage more than 120 days past due (SOR ¶ 1.c). It was also alleged the Applicant's monthly expenses exceeded his monthly income, according to an August 12, 2008, Personal Financial Statement (PFS) (SOR ¶ 1.d). In response, Applicant admitted the SOR ¶ 1.a allegation and denied the others. After reviewing the pleadings, the transcript, and the parties' exhibits, I have made the following findings of relevant fact.

Applicant is 36 years old and works as a senior network administrator for a defense contractor located in the southeastern United States. He served in the United States Marine Corps from August 1990 until August 1994. From January 1995 until January 1999, Applicant served on active duty in the U.S. Army. He has served in the U.S. Army Reserve since then. Applicant has held a clearance through both his Army Reserve and civilian positions since at least 1999. (Tr. 11)

Applicant was activated from 2005 until June 2007. During that time, his employer paid the difference between his civilian pay and his military base pay. Applicant also received his non-taxable basic allowance for subsistence and basic allowance for housing on top of that. (Gx. 1; Gx. 2; Tr. 50 - 51)

Applicant has held his current job since November 2007. From January 1999 until June 2007, he worked in the information technology field as a federal contractor at job sites on the west coast. In October 2002, he was laid off due to a lost contract. He found work almost immediately, albeit at about 75% of his previous pay. For the entire time he was on the west coast, Applicant also drilled in a pay status with the Army Reserve. Applicant was unemployed in the civilian sector from June 2007, when he was

³ The Revised Adjudicative Guidelines were approved by the President on December 29, 2005, and were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they supercede the guidelines listed in Enclosure 2 to the Directive.

laid off a second time, until he was hired in November 2007 and moved to the southeast. He did not drill or receive any Army pay from November 2007 until he found a new unit at his current location in 2008. (Gx. 1; Tr. 60)

Applicant and his wife have been married since April 2006. He was previously married from April 1993 until January 1999. He and his ex-wife separated in 1995. Before then, his finances were sound; however, his ex-wife ran up credit card balances and/or failed to make payments on accounts for which Applicant was jointly liable. For example, judgments were obtained against Applicant for unpaid rent. He also accrued tax debts, although the cause of the tax debts is unknown. Applicant paid or resolved all of those debts almost ten years ago. (Gx. 1; Gx. 3; Gx. 5; Gx. 6)

Applicant re-married in April 2006. Before they were married, Applicant and his second wife had a child together in 1989. Applicant paid his now-wife \$731 each month in child support until they got married. Applicant also fathered a child in 1997 outside his first marriage. When he learned the child was his and was ordered to pay child support, his monthly obligation was back dated six months. Due in part to his lay offs in 2002 and 2007, Applicant was at times unable to pay both his child support obligations and accrued a \$14,000 arrearage in his support obligation for his younger child. He has paid that obligation down to about \$12,000 since 2007 through a garnishment of both his civilian and Army Reserve pay. He could opt to have the Army garnishment ended as redundant, but has elected to continue it so he can pay down his debt more quickly. As a result, he is currently paying nearly \$1,000 each month on his remaining child support obligation, which is being enforced by the child services agency in the state where the child's mother lives. (Tr. 34 - 39; Gx. 2)

In August 2005, Applicant purchased a home for \$350,000 while living and working on the west coast. At one time, the home was worth at least \$450,000, but it lost at least \$200,000 in market value through 2008. However, Applicant began to miss payments in 2007, when he was laid off from his previous job. He and his wife were unable to sell the house before he took his current job, and any rental income they received was not enough to cover the mortgage. As of November 2008, he was about \$14,000 past due on his first mortgage and about \$3,813 past due on his second mortgage. The second mortgage was originally for \$89,000, but they have negotiated a settlement of that obligation which now requires that they pay \$4,000 to the lender. (Gx. 3; Tr. 39) Applicant and his wife satisfied their first mortgage obligations through a short sale of the house for \$180,434.91 on November 26, 2008. (Ax. B)

When Applicant responded to interrogatories propounded by DOHA adjudicators in August 2008, he submitted a personal financial statement (PFS) that showed his monthly expenses exceeded his monthly income by about \$500. (Gx. 2) At his hearing, he updated this information to show that his monthly income (which includes his wife's income) now exceeds his expenses by nearly \$2,000. (Tr. 40 - 48) Applicant and his wife together have five credit cards with a total balance of about \$17,000. Applicant attributes most of their credit card balance to moving expenses and to expenses while he was unemployed in 2007. Available information shows that these accounts are being paid as agreed. (Tr. 46 - 48; Gx. 3; Gx. 4)

Applicant's most recent performance appraisal was positive and indicates he is performing at a level likely to result in future advancement. He received a merit-based salary increase in September 2008. (Ax. B)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines (AG). 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 factors 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 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 concerns and adjudicative factors addressed under AG ¶ 18 (Guideline F - Financial Considerations).

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. 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. Thus, the government

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.

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.⁷

Analysis

Financial Considerations.

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

[f]ailure 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 government presented sufficient information to support the allegations in SOR ¶ 1.a - 1.d; that is, that Applicant accrued at least \$14,000 in past due child support payments, that he owed nearly \$18,000 in past due payments on his first and second mortgages as of November 2008, and that he had a negative monthly cash flow as of August 2008. Combined with information from a previous background investigation, it was reasonable for adjudicators to conclude that Applicant had a lengthy history of financial problems. Insofar as the record supports those allegations, 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*).

Applicant’s response to the government’s information showed that he is repaying the child support debt at a rate that is likely to resolve that obligation in the next 12 months. He also presented information that shows he has resolved the delinquent mortgage payments alleged in SOR ¶ 1.b and that he has negotiated a payment amount for his second mortgage (SOR ¶ 1.c) that is well within his ability to pay. As to his current financial condition, Applicant now has a positive monthly cashflow that is sufficient to meet his current expenses and to ultimately resolve his remaining child support and mortgage obligations. As to the information about Applicant’s financial problems around the time his first marriage ended, those debts and obligations appear to have been resolved in a timely manner. Those earlier problems were wholly unrelated to his current circumstances and are not likely to recur.

All of the foregoing supports application of the mitigating conditions at AG ¶ 20(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*

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

current reliability, trustworthiness, or good judgment) and AG ¶ 20(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*). Applicant's remaining child support debt is being paid at a steady pace and his second mortgage has been settled for a reasonable amount. In sum, it is unlikely that Applicant's remaining debts are likely to cause him to act contrary to the national interest to generate funds. On balance, available information is sufficient to mitigate the alleged security concerns about Applicant's finances.

Whole Person Concept.

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). Available information portrays Applicant as a mature, responsible 36-year-old defense contractor employee. Aside from two periods of unemployment, he has worked steadily in the defense contracting industry and in the Army Reserve. His performance in his current job bodes well for continued advancement and he has taken the steps he could reasonably take to resolve his mortgage problems, which were not of his doing. Also to be considered here is his service in the military, with the Marine Corps and the Army, for nearly 20 years. A fair and commonsense evaluation of this record shows that the security concerns raised by Applicant's financial problems are mitigated, and his finances do not put him at risk of acting contrary to the national interest. Any doubts about Applicant's suitability for access to classified information have been satisfied.

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:	FOR APPLICANT
Subparagraph 1.a - 1.d:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge