



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-06317
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Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

March 25, 2010

Decision

MALONE, Matthew E., Administrative Judge:

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

On April 5, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his work as a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two sets of interrogatories¹ to clarify or augment information about potentially disqualifying information in his background. After reviewing the results of the background investigation, as well as Applicant's responses to the interrogatories, DOHA

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

adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to allow him access to classified information. On July 30, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the revised adjudicative guidelines³ under Guideline F (financial considerations).

On August 24, 2009, Applicant responded to the SOR and requested a hearing. The case was assigned to me on September 21, 2009, and I convened a hearing on November 20, 2009. The parties appeared as scheduled. The government presented five exhibits, which were admitted without objection as Government Exhibits (Gx.) 1 - 5. The Applicant testified on his own behalf, presented one witness, and proffered three exhibits that were admitted without objection as Applicant's Exhibits (Ax.) A - C. The record remained open after the hearing to give Applicant time to provide additional relevant information. DOHA received the transcript of hearing (Tr.) On December 1, 2009. The record closed on December 8, 2009, when I received Applicant's post-hearing submission, which has been admitted without objection as Ax. D.

Findings of Fact

The government alleged under Guideline F that Applicant owes approximately \$20,016 for 18 delinquent debts (SOR ¶¶ 1.a - 1.r), and that as of July 30, 2009, those debts remained unpaid. In his response to the SOR, Applicant denied all of the SOR allegations. Having reviewed the pleadings, examined the exhibits, and assessed the testimony provided, I make the following findings of relevant fact.

Applicant is 37 years old, and has worked as a security guard for a defense contractor since January 2007. His co-workers and a supervisor are happy with his job performance, and they recommend him for a position of trust. (Ax. D) He and his wife have been married since August 2008, but have lived together and co-mingled their finances since July 2006. She has two children (ages 19 and 13) from before the marriage. (Tr. 16, 50, 79) Applicant worked as a production technician for a manufacturing company from August 1999 until he was laid off in April 2001. Applicant served on active duty in the U.S. Army from September 1989 until August 1993. He held a security clearance for much of his military service. (Gx. 1) When he was discharged, he was given a 30% disability benefit, which paid him about \$225 each month. His disability later increased to 60%, and he now receives about \$800 each month from the Veterans' Administration (VA). (Tr. 32, 56)

After Applicant was laid off in April 2001, he supported himself on unemployment benefits of about \$200 weekly and his 30% disability payments. When his

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 revised 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, the revised adjudicative guidelines take precedence over the guidelines listed in Enclosure 2 to the Directive.

unemployment ran out in September 2001, he broke the lease for the apartment he was renting and moved in with his mother. Because he was unable to find full-time employment, he decided, in January 2002, to enroll in college. His tuition and expenses were paid by the GI Bill. In December 2004, he received an associate's degree in criminology. Thereafter, he received VA vocational training as part of his disability benefits. However, until he was hired by his current employer in January 2007, he was only able to find occasional work through brief stints as a temporary agency employee. (Gx. 1; Gx. 2; Tr. 36 - 38, 41 - 43)

At the time he was laid off, Applicant was leasing a car from Chrysler. The lease began in 1999, but in 2001 he returned the car when it became apparent that he could not keep up with the payments. He was told at the time that he would owe nothing more on the car, but later received a \$1,000 bill. However, a delinquency later appeared on his credit report (Gx. 4) that showed a \$5,728 debt to Chrysler (SOR ¶ 1.k) This is either a remainder due after resale or the balance due on a lease. Applicant testified that when he contacted Chrysler about this debt, he again was told that he owed them nothing. (Gx. 2; Tr. 29, 51) In support of his claim that he does not owe the debt alleged at SOR ¶ 1.k, he presented a copy of the title of a Chrysler showing Applicant as the owner, and that a lien against the car was released in 2003. (Ax. C) This debt still appears in Applicant's credit history as a charged off debt. (Ax. A)

When Applicant broke his apartment lease in 2001, he incurred a debt for \$1,050 (SOR ¶ 1.e), which is being enforced through a civil judgment that he has not yet paid. He also incurred a \$191 debt for unpaid cable television (SOR ¶ 1.q) and a \$325 debt for unpaid phone service (SOR ¶ 1.d). Also attributable to Applicant are a \$1,078 unpaid cell phone bill (SOR ¶ 1.p) and a \$443 unpaid insurance bill (SOR ¶ 1.o). Applicant stated that he does not recognize these debts, but also acknowledged that he had cable service around the time he broke the lease, and that at one time he had car insurance and cell phone service with the listed creditors. (Gx. 2; Gx. 4; Tr. 64)

Applicant was engaged to be married until sometime in 2002. Before he broke up with his fiancée, he had financed the purchase of furniture and an engagement ring. Both accounts (SOR ¶¶ 1.h and 1.i) remain unpaid and total about \$5,090. As to the jeweler where he bought the ring, that company is out of business. As to the furniture account (SOR 1.h), available information shows this debt was charged off as a business loss. (Gx. 1; Gx. 2; Gx. 4)

In 1999 or 2000, Applicant's Chrysler had to be repaired by the dealer. Applicant was under the impression that his warranty or lease agreement covered the cost of a rental while his car was in the shop. However, Chrysler did not pay for the rental as he expected and he owes \$114, which has been referred for collection. (Gx. 2; Tr. 58 - 60)

Applicant also owes about \$4,337 to Capital One Bank for four unpaid credit card accounts. Two of the debts (SOR ¶¶ 1.f and 1.g) are being enforced by civil judgments. The other two (SOR ¶¶ 1.i and 1.j) were referred to collection. Applicant insisted he has only had one Capital One account, but the credit report obtained during Applicant's background investigation showed four different entries identified by four different

account numbers. The two accounts that are not the subject of civil judgments have been charged off as business losses. (Gx. 2; Gx. 4)

Of the remaining debts listed in the SOR, Applicant has no knowledge of unpaid the medical debts at SOR ¶¶ 1.a and 1.r, which total \$1,679. He is trying to get more information about the \$156 unpaid medical debt at SOR ¶ 1.b, but he insists most of his medical treatment between his Army discharge and the start of his current employment was provided by the VA. Finally, Applicant has no knowledge of the \$44 debt listed at SOR ¶ 1.n.

Around the time he was laid off in 2001, Applicant tried making arrangements with his creditors for repayments or other resolutions. However, he was unsuccessful, largely because he had no money with which to make any reasonable payments. In 2007, after he met with a government investigator during his background investigation, Applicant sought help from a credit counseling service, but they could not help him because of his low income and because most of his delinquent debts had been written off. On December 1, 2009, Applicant enrolled in a debt management plan, but he is paying only about \$23 each month to satisfy two debts. Applicant also stated that he has disputed some of the debts alleged in the SOR, but he did not provide any information to support his claims. (Ax. D; Tr. 34, 69 - 71)

Applicant and his wife together earn between \$85,000 and \$95,000 each year. She manages their monthly finances and they have greatly reduced their monthly expenses through detailed monitoring of their spending. She testified that they usually have about \$1,000 remaining each month after expenses. (Tr. 74 - 79)

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.

⁴ Directive. 6.3.

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 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 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 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 to classified information in favor of the government.⁷

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 Applicant denied all of the allegations in the SOR, thus placing on the government the burden of presenting sufficient information to prove those controverted facts.⁸ The government has presented sufficient information to support all of the

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

⁶ See *Egan*, 484 U.S. at 528, 531.

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

⁸ Directive, E3.1.14

allegations in SOR ¶ 1.a - 1.r; that is, that Applicant accrued \$20,016 for 18 delinquent debts. Available information, including his response to interrogatories and his response to the SOR, further shows that Applicant has not yet paid or otherwise resolved those debts. Accordingly, the record supports those allegations and 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*).

By contrast, available information showed that Applicant's financial problems began when he was laid off in 2001. He was unable to pay his rent and related expenses, or pay his car note and related expenses. Other debts already in existence when he became unemployed went unpaid as well. He remained unemployed, in part, due to his choice to go to school, but was still unable to find work for almost three years after he obtained his associates' degree. However, since finding full-time work in January 2007, he has done little to actually pay or otherwise resolve his debts. It is understandable that credit counseling or debt management services could not help him when he was making little or no money, but he did not renew his efforts with a debt management service until around the time of his hearing.

Applicant has not documented his claims that he disputed some of his debts, and his claim that he does has no knowledge of the debts that are being enforced through civil judgments is untenable. Without substantial evidence to the contrary, it must be accepted that creditors were able to demonstrate to a judge that the Applicant owed but had not paid the debts in question. Accordingly, available information does not support 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 current reliability, trustworthiness, or good judgment*); 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*); AG ¶ 20(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*); AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); or AG ¶ 20(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 has not mitigated the security concerns about his 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). Applicant is 37 years old, has served his country honorably, and has performed well in his current job. He also appears to be in the process of improving his finances. Now that he is married, he has both financial and personal stability that will help him avoid a recurrence of his past financial problems. However, without better documentation of his efforts, questions

remain about his willingness to follow through on his stated intentions to resolve his past-due debts. Applicant is not expected to be completely debt free, but he is expected, when able, to act in a reasonable way in response to his adverse financial circumstances. Because he has not done so, a fair and commonsense⁹ evaluation of this record shows that concerns remain about Applicant's finances, thus perpetuating the doubts raised by the government's information about his ability or willingness to protect the government's interests as his own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved for the government.¹⁰

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.r: Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

⁹ See footnote 4, *supra*.

¹⁰ See footnote 7, *supra*.