



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



In the matter of:)
)
) ISCR Case No. 08-07339
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel

For Applicant: *Pro se*

August 26, 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.

Applicant signed and submitted a Security Clearance Application (SF 86) on May 30, 2007. 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 February 24, 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 March 31, 2009, Applicant admitted with explanation all five allegations. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on April 29, 2009, and the case was assigned to me the following day. DOHA issued a Notice of Hearing on May 7, 2009, and I convened the hearing as scheduled on May 27, 2009.

During the hearing, the government offered four exhibits, marked as Government Exhibits (GE) 1 through 4, which were admitted. Applicant testified, did not offer exhibits, and presented the testimony of four witnesses. I held the record open to allow Applicant to submit documents. Applicant timely submitted nine documents. Department Counsel forwarded the documents, without objection, and I admitted them into the record as AE A through I.³ DOHA received the transcript on June 4, 2009.

Findings of Fact

After a thorough review of the pleadings, Applicant's response to the Statement of Reasons, and the record evidence, I make the following findings of fact.

Applicant, 60 years old, holds an associate's degree in applied science and general education. He married in 1973, divorced in 2001, and has a 29-year-old son

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.

³ Applicant's post-hearing submission contained nine items marked numerically. To avoid confusion with the government's exhibits, I will identify the items as follows: AE A-Applicant's plan to pay debts; AE B and C-pay stubs for two weeks in December 2008 and two weeks in May 2009, respectively; AE D-December 2007 letter re Department of Veterans Affairs benefit increase; AE E-1099-R forms for 2008 retirement pay; AE F-Applicant's resume; AE G-receipts for bills paid in December 2008; AE H-list of checks paid June 2008 – June 2009; AE I-June 2009 letter re rental lease.

who does not live with him. He is currently in a long-term relationship with a woman, but she does not contribute financially (GE 1; Tr. 27, 29-30, 74-75).

Applicant served in the U.S. Army from 1973 to 1993 and reached the rank of Chief Warrant Officer (CW3). He held a security clearance during his service. He was employed as an information technology technician from 1995 to July 2000. At that point, Applicant started his own computer-services business in Puerto Rico. After September 11, 2001, the Puerto Rican economy suffered, as did Applicant's business. He lost approximately \$80,000 during the years he operated this business. He used credit cards and his pension account funds to pay his bills. After approximately three years, he closed the business⁴ and returned to the United States with about \$30,000 to \$35,000 in debt. He held a series of short-term jobs between 2004 and 2007, most lasting one to four months. He had two periods of unemployment: one month in 2004, and a total of six months in 2005. Applicant testified that although he is highly employable, he is usually offered low salaries. At one point, he received unemployment compensation, just before he began his current position in November 2007 (GE 1, 2; AE F; Tr. 18-20, 27-28, 42-44).

During his periods of short-term employment and unemployment, Applicant was unable to earn enough money to pay his debts. He applied for personal loans several times so that he could consolidate the debts, but was rejected. He was unable to pay the amounts offered by creditors to settle some debts. He has been making payments on one bank credit card that is not alleged in the SOR, and he has paid the balance on another debt. However, as his delinquencies continued, the interest rates and balances owed increased. Applicant testified that some of the SOR debts are charged off on his credit bureau report. He is uncertain whether or not he still owes these debts (GE 3, 4; AE G, H; Tr. 21-22). He testified,

...Now, to me, charge-off means that it's cleared, okay, that they'll take the loss on it for business purposes and write it off.

They don't -- they have never said that the payment had to be made again, so here the card shows as charged off. Like [credit card company 1] and [credit card company 2], they were charged off as bad debt, so does that constitute a debt to me still?

I mean, if possible, I'll pay them off, but it's not going to be right away (Tr. 21).

⁴ The evidence indicates a discrepancy in the dates Applicant was self-employed. GE 1 and GE 2 indicate he closed the business in 2004. However, Applicant's resume (AE F) shows he was employed at a business with the same name until November 2006.

Applicant also believes that if he waits one year, he will be able to arrange settlement agreements with the creditors, or the companies might charge off the debts:

I've used those time limits in order to try and get the lowest possible payback that I have to return, but in order to do that, I have to have the money available to me, and that is my problem.

Only last month am I being able to start accumulating a little bit of extra money so I can go to these credit companies. On a \$10,000, they'll probably ask for \$2,000, okay, or 70 percent I think they take off of the debt, and if I have to pay just 30 percent of the debt, I can clear that out, and that's to my advantage, and that's what I'm trying to do (Tr. 81).

Applicant believes that the interest rates charged by the creditors are exorbitant, and if he can pay a lower amount, which is closer to what he actually owes, then he will try to pay that lower amount (Tr. 80-84).⁵

In 2005, Applicant used a consumer counseling agency, but was required to pay the agency more than it paid on his debts, so he ended the program after about one month. He considered filing for bankruptcy, and completed the online financial management classes that are required by those filing a petition. About one year ago, he retained an attorney but "decided not to fill [sic] bankruptcy because of my pride." In addition, he learned that he is "in the gray area of qualifying for bankruptcy due to the new laws." He plans to continue to consult with the attorney (GE 2; Tr. 75-79).

Applicant's starting salary in 2007 was \$80,000, and after subsequent increases, he now earns an annual gross income of \$86,000. His net income is approximately \$50,000, or \$4,000 net monthly. Applicant's additional income includes monthly payments of \$1,647 in retirement income, which amounted to \$25,000 in 2008, and about \$120 per month in veteran's benefits. When all three sources are taken together, Applicant's monthly income is approximately \$5,767. He pays approximately \$4,000 in monthly expenses, and \$1,417 in debt payments, leaving a monthly net remainder of approximately \$350 (GE 2, 3; AE B, C, D, E; Tr. 55-58).

The Statement of Reasons alleges five debts, totaling approximately \$55,200. The delinquent accounts include four credit cards with balances of \$14,545; \$13,767; \$7,056; and \$17,566, as well as one unsecured loan with a balance of \$2,346. These debts became delinquent between February 2006 and September 2007. In his Personal Financial Statement (PFS), Applicant listed a monthly payment on one of the SOR

⁵ Applicant Exhibit A includes explanations of the terms "debt settlement," and "charge off." The source of this information is unclear. As I cannot determine its reliability, I will not rely on it in reaching my conclusions. The exhibit also includes Applicant's plan to address his debts, and I will consider this information (AE A).

debts (allegation 1.e.). However, in his action plan, he listed a higher unpaid balance for this debt than is shown in the SOR, and also noted that he would start paying it off in September 2009. Therefore, it is unclear from the evidence whether he has, in fact, been paying the monthly payment on this debt that he listed in his PFS. He did not list any payments on the other four SOR debts. Applicant testified that only within the month before the hearing did he become financially capable of paying his delinquent debts at a faster rate (GE 2, 3, 4; AE A; Tr. 22).

Following the hearing, Applicant submitted a document titled, "Plan of Objectives and Actions to Repay Debt." The plan includes five debts listed in the SOR, and one debt not alleged in the SOR. Starting in August 2009, Applicant plans to save funds for approximately four months, contact one creditor, obtain a settlement for 70 percent of the balance owed, and pay the settlement. Using this plan, Applicant hopes to pay the five SOR debts sequentially by April 2011 (AE A).

Applicant's four witnesses have all known him approximately 1.5 years. His current supervisor and company operations officer is aware of Applicant's financial problems, and testified that his character is above reproach. The three co-workers who testified are also aware that Applicant has financial problems stemming from his business venture. They testified that he is a team player who has a serious attitude about his work, and has shown honesty and integrity in his performance. One co-worker, who holds a high-level clearance, testified that Applicant's long military service, during which he held a security clearance, shows that he can be trusted with classified material (Tr. 90-122).

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).⁶ Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition under a Guideline 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).

⁶ Directive. 6.3.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁷ to grant an applicant access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny a security clearance. The government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to an applicant to refute or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden.⁸ A person who has access to classified information enters into a fiduciary relationship with the government based on trust. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness to protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of reasonable doubts about an applicant's suitability for access in favor of the government.⁹

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.

The facts presented support application of AG ¶19(a) (inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations). Applicant owes approximately \$55,000 in delinquent debt that started accruing in 2006. These debts remained unpaid as of the date of the hearing, indicating that both disqualifying conditions apply.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

The financial considerations guideline also includes factors that can mitigate disqualifying conditions. The following mitigating conditions are relevant:

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.

Applicant's debts are numerous, amounting to approximately \$55,000, and they are recent, as they currently remain unpaid. They did occur under circumstances that are unlikely to recur – a failed attempt to operate his own business – and it is unlikely that he will initiate such a venture again. However, Applicant has not tried to resolve these debts over the past year and a half, since he obtained steady employment. His inaction casts doubt on his good judgment in relation to his financial obligations. AG ¶20(a) does not apply.

The key element in mitigating condition AG ¶20(b) is that the factors that caused the financial problems were beyond an applicant's control. Applicant's delinquencies stemmed from several years of trying to operate a failing business, his use of credit cards to pay his bills during that period, and his inability to pay these debts because of subsequent short-term, generally low-paying jobs. The after-effects of September 11 contributed to the failure of Applicant's business, which was beyond Applicant's control. However, over the past approximately one-and-one-half years, Applicant has been employed full-time, with a good income from his employment, his military pension, and veteran's benefit. Despite having a monthly remainder of more than \$300, Applicant has made little effort to deal with his significant debt during this time. Without evidence of efforts that Applicant attempted to resolve his financial situation, I conclude that he has not acted responsibly, and this mitigating condition cannot be applied.

AG ¶¶ 20(c) and (d) relate to efforts to resolve debts. Applicant has not sought financial counseling. He considered bankruptcy, and retained an attorney, but has not followed through on that plan. He initiated contact with a debt consolidation company, but also decided not to use that method. There is no evidence that Applicant has paid any of the five SOR debts or made consistent payments on any of them. Applicant's

plan to pay the debts in the future is simply a promise. A promise of future payment, without documentation to substantiate a track record of consistent payments, does not constitute a good-faith effort to pay debts. AG ¶¶ 20(c) and (d) do not apply. Overall, Applicant remains substantially indebted, and has not taken documented steps to resolve his financial obligations. I resolve Guideline F against Applicant.

Whole Person Analysis

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. An administrative judge should consider the nine adjudicative process factors listed at 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 upon careful consideration of the guidelines and the whole person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

At the time his debts started to become delinquent in 2006, Applicant was a mature and experienced adult approximately 57 years of age. He has done little since obtaining steady work to resolve his indebtedness, despite earning an income that would have allowed him to make some effort toward setting up payment plans and initiating payments. Finally, his plan to pay his delinquencies in the future does not constitute a track record of documented effort to resolve his debts. Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraph 1.a through 1.e.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge