



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-08190
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Applicant for Security Clearance)

Appearances

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

May 27, 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 denied.

On February 6, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain a security clearance required for his job with a defense contractor. 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 for access to classified information. On December 8, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

concerns addressed in the revised Adjudicative Guidelines² 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 March 31, 2009. The parties appeared as scheduled. The government presented four exhibits (Gx. 1 - 4), which were admitted without objection. Applicant testified on his own behalf and presented two witnesses. He also submitted six exhibits (Ax. A - F), which were admitted without objection. DOHA received the transcript of hearing (Tr.) on April 10, 2009.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$17,500 for 16 delinquent debts (SOR ¶¶ 1.a - 1.p). It was further alleged that he had only \$11 remaining each month after expenses, which did not include payments for any of his delinquent debts. (SOR ¶ 1.q) Applicant admitted all of the SOR allegations. He also provided explanatory information with his response. In addition to the facts established through Applicant's admissions, after reviewing the pleadings, the transcript, and the parties' exhibits, I have made the following findings of relevant fact.

Applicant is 39 years old. Since January 2008, he has worked as a principal information engineer for a defense contractor in the southeast United States. Before being hired for his current job, Applicant was unemployed for two months after he was laid off from a software developer/business analyst job he had held since January 2006. Prior to that, he worked for the same company through a temp agency beginning in September 2005. (Gx. 1)

For most of the previous ten years, Applicant lived and worked in the northwest United States. He worked as a bookkeeper for and helped run his mother's accounting business from January 2001 until he moved to the southeast in August 2005. Applicant was married from October 1995 until he and his ex-wife divorced in May 2006. They actually separated in September 2004. They had three children (now ages 12, 10, and 8) for whom he pays \$330 in monthly child support. (Gx. 1; Gx. 2)

When he submitted his SF 86, Applicant disclosed that his wages were garnished in 2005 to satisfy an arrearage in his child support payments. He has since satisfied that debt and remains current in his support obligations. (Ax. B; Gx. 1; Gx. 2) He also disclosed through his SF 86 that he was more than 180 days past due in the amount of \$6,000 on a loan for a car he bought in 2001. The subsequent background investigation and supplemental DOHA interrogatories established that Applicant owed the debts alleged in the SOR.(Gx. 2; Gx. 3)

² 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.

As of the hearing, none of the debts listed in the SOR have been paid or otherwise resolved. (Tr. 54 - 69) Applicant first became aware of the full scope of his indebtedness when he was interviewed by a government investigator in March 2008 as part of his background investigation. Thereafter, he resolved his child support arrearage and a debt for unpaid rent that was incurred by his wife after he moved out in September 2004. (Gx. 2; Ax. B; Tr. 60, 87 - 88) However, he took no other action to pay or otherwise resolve his debts until after he received the SOR. At that time, he enrolled in a debt solution program. He pays a company \$264 each month to negotiate and/or restructure his outstanding debts. The plan calls for resolution of the debts listed in SOR ¶¶ 1.a, 1.b, 1.d - 1.f, 1.h - 1.j, and 1.l - 1.p, over the next 36 months. The total to be paid is roughly 55% of the actual debt owed. However, there is no information confirming that Applicant has actually made payments pursuant to the plan and/or that any of the debts have yet been negotiated or resolved. The monthly payments go to the debt solution company to satisfy its fee of 15% of the total debt owed (\$2,586.75). Thus, it appears no funds will be paid to Applicant's creditors for the first 10 months of the plan. (Ax. A) The debts not included in the plan (SOR ¶¶ 1.c, 1.g and 1.k) total \$270.

Applicant attributes his financial difficulties to a period of unemployment between 1996 and 1998 after he suffered an on-the-job injury. He and his first wife lived off her income and his disability checks. He returned to work with a communications company in 1998, but over the next four years, Applicant and his family moved frequently, lived with relatives, and briefly lived in a tent. (Gx. 2; Tr. 39 - 40) To make matters worse, he was fired from his job in 2000 for poor performance. Applicant claims he was unable to function after he learned his first wife was having an affair with his best friend. (Tr. 81 - 82) In 2002, he returned briefly to school, which he paid for using student loans. Five federally guaranteed student loans had been in a collection status before Applicant consolidated them in September 2005. They now appear to be in good standing. (Gx. 3) One loan was received directly from the school and is still delinquent in the amount of \$1,916 (SOR ¶ 1.j). (Gx. 3)

In November 2008, Applicant responded to DOHA interrogatories about his finances. (Gx. 2) Part of his response included a personal financial statement (PFS) that showed he had less than \$20 left each month after expenses. At hearing, he submitted information showing he had about \$463 remaining each month. (Ax. C) He explained that he remarried in October 2008, and his new wife contributes about \$500 each month to rent and utilities. However, he also disclosed that she is currently unable to work because of a heart condition. Applicant further testified that "extra entertainment" uses up the money they have left over each month. (Tr. 71 - 76)

Applicant is successful at his current job. He is well regarded by management for his diligence, reliability, and overall job performance. His most recent performance evaluation was positive, and he was given a 6% raise as a result. (Tr. 98 - 112)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ 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 interest⁴ 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.⁵

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

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the government.⁶

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.p. Since about 2002, Applicant has incurred approximately \$17,245 in unpaid and delinquent debt. The government's information also established that, as of September 16, 2008, Applicant had a marginally positive monthly cash flow of about \$11 after expenses, which did not include repayments of any of his past due debts. Applicant further admitted the SOR allegations. The information presented by both the government and the Applicant further shows that the debts remained unpaid as of the date of Applicant's hearing. 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 relies, in part, on the fact that he was unemployed due to an on-the-job injury for two years until 1998. He was also unemployed for nearly a year after being fired from his job in 2000. However, he worked steadily from 2001 until 2005, when he moved across country while his divorce was pending. He found work almost immediately on relocating and has been employed for all but two months since August 2005. Applicant also avers that his divorce was a contributing factor in his financial problems. I have considered the potential application of the mitigating conditions at 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*); however, Applicant's extended unemployment occurred over ten years ago. His unemployment after being fired, while certainly a factor, is also dated as he has been almost constantly employed since 2001. He has not shown how a period of unemployment eight years ago has kept him from paying or otherwise addressing his debts. As for the possible adverse financial effects of his divorce, it was finalized in 2006, but he and his ex-wife separated in 2004. Again, he has not demonstrated how those events have either caused his debts or precluded him from resolving them.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

In light of Applicant's enrollment in a debt resolution plan and his claim he now has at least \$400 in positive monthly cash flow, I have also considered the possible application of the mitigating conditions at 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*) and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Available information does not support application of either factor. As to his debt resolution plan, he did not undertake this or any similar action until after he received the SOR. Further, it is unclear if he is actually making any payments through the plan or if an agreement has actually been finalized. Nor is there any indication that he engaged in any systematic effort to resolve his debts until he thought he might lose his clearance. As to his claim that he and his new wife have more money left over after paying their monthly expenses, Applicant testified both that the money left over each month is used for entertainment and that his wife is not currently working for medical reasons. In short, Applicant's information in response to the government's case does not show that his finances have improved or that his past due debts are being resolved. He has not mitigated the security concerns raised by the available information 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 appears to be a mature, reliable employee whose supervisors at work endorsed his appeal of the preliminary decision to deny his request for a clearance. There is positive information in his background about his personal reliability (his recent salary increase and his job performance) and about his finances (his resolution of a debt for unpaid rent incurred by his ex-wife). However, this information must be weighed against his failure to resolve even the more modest debts in his credit history, the fact that some of his debts have been delinquent for almost seven years in some cases, and his failure to demonstrate that his finances will not continue to be a concern in the near future. On balance, I cannot conclude that the favorable information in his background is sufficient to overcome the doubts about his suitability for a security clearance. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁷

⁷ See footnote 6, *supra*.

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

Subparagraph 1.a - 1.q: 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 continued access to classified information. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge