



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-08204
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Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

July 7, 2009

Decision

MALONE, Matthew E., Administrative Judge:

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

On February 25, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to retain 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) issued to Applicant a set of interrogatories¹ regarding information in his background. After reviewing the results of the background investigation together with his response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's request

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

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

for continued³ access to classified information. On December 12, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the revised Adjudicative Guidelines (AG)⁴ under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was originally assigned to an administrative judge on March 10, 2009, but was transferred to me on March 19, 2009. I convened a hearing on April 22, 2009, at which the parties appeared as scheduled. The government presented four exhibits (Gx. 1 - 4), which were included in the record without objection. Applicant testified on his own behalf. I left the record open after the hearing to receive additional relevant information from the Applicant. Applicant's post-hearing submission was received on April 30, 2009, and included in the record without objection as Ax. A. DOHA received the transcript of hearing (Tr.) on May 7, 2009.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$38,653 for 16 delinquent debts (SOR ¶¶ 1.a - 1.p). Applicant admitted all of the SOR allegations. He also claimed he had settled or paid the debts listed in SOR ¶¶ 1.b - 1.j and 1.m. In addition to the facts established through Applicant's admissions, after reviewing the pleadings, the transcript, and exhibits, I have made the following findings of relevant fact.

Applicant is a 47-year-old technical representative for a defense contractor providing support services for helicopters used by the U.S. military. He served in the U.S. Navy as an aviation electrician's mate from 1981 until 1992. After attending college for about 18 months after his discharge, Applicant was hired by a defense contractor in October 1993. He has been steadily employed doing the same work since then, but he has had to change companies and relocate at least four times as the contract has changed hands since February 2001. (Gx. 1; Tr., 23, 27, 40)

Applicant was married from November 1983 until February 1996, when the marriage ended in divorce. (Gx. 1) In 1987, he and his ex-wife filed for bankruptcy and were discharged of about \$27,000 in debts. Applicant claimed his debts at that time stemmed mainly from his ex-wife's spending habits and her failure to pay their bills while he was away on duty for the Navy. (Tr. 28 - 30)

The unpaid debts alleged in SOR ¶¶ 1.b - 1.j arose from medical services and treatment related to Applicant's sleep apnea disorder between 2006 and 2008. (Tr. 49 - 50) These debts represent costs and co-payments not covered by his insurance. Applicant claims he has paid and/or settled these debts. In support of his claim, he

³ Applicant has held a security clearance since March 1981.

⁴ 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.

submitted post-hearing a three-page billing record from the hospital cited in the SOR. (Ax. A)

In 2001, Applicant borrowed \$25,000 which he used to invest as a silent partner in a sports bar. He repaid the loan, but the business failed less than three years later. After the other partners in the business filed for bankruptcy, Applicant was sued by the bar's landlord for the balance due on their lease. As a result, Applicant now owes \$33,622 for a civil judgment entered against him in 2004. Aside from a few payments made through wage garnishment before he moved to his current location in 2005, Applicant has not made arrangements to pay this debt. He did not notify the creditor or the court of his new address when he moved. (Gx. 1; Gx. 3; Gx. 4; Tr., 23 - 25, 32 - 36, 46 - 48)

Since 2000, Applicant has owed about \$1,900 for two delinquent credit cards (SOR ¶¶ 1.l and 1.n). He has also owed over the last nine years, a \$228 debt to a credit union (SOR ¶ 1.k), and \$545 to a furniture company (SOR ¶ 1.p). Applicant has taken no action to pay or otherwise resolve these debts. Applicant also owes \$82 for a delinquent telephone account (SOR ¶ 1.n). He claims to have paid this debt, but produced nothing to document his claim. Finally, Applicant owes a \$177 debt for a satellite television account delinquent since 2006 (SOR ¶ 1.o). He has not paid this account. (Gx. 3 and 4; Tr., 36 - 40)

A personal financial statement (PFS) submitted in response to DOHA interrogatories in October 2008 shows Applicant has about \$1,250 remaining each month after expenses and loan payments. The PFS did not show that he is paying anything on the debts listed in the SOR. (Gx. 2; Tr. 41 - 44)

Policies

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. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines. 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

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

⁶ Directive. 6.3.

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, by itself, conclusive. 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).

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.⁷ 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 in favor of the government.⁸

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. The facts thus established show that Applicant owes approximately \$38,653 in delinquent debts dating back to at least 2000. The record 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*).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

As to SOR ¶¶ 1.b - 1.j, Ax. A shows a zero balance due on 11 office visits or procedures between June 2006 and June 2008. Comparison of this document to the credit reports proffered by the government (Gx. 3 and 4) does not directly corroborate Applicant's claim. However, this information shows ongoing medical services and payments over the time period at issue. SOR ¶¶ 1.b - 1.j are resolved for Applicant.

Security concerns about Applicant's financial problems might be resolved by 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*), or AG ¶¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant benefits from AG ¶¶ 20(d) as he demonstrated that he has paid or otherwise resolved the medical debts alleged in the SOR. I have also considered applications of AG ¶¶ 20(b) as the judgment for \$32,000 arose from a downturn in business. However, this mitigating condition does not apply. Applicant has not acted responsibly in trying to resolve that debt and has failed over several years to resolve the five debts under \$1,000 each despite clearly having the financial means to do so. Such inaction outweighs the positive information about SOR ¶¶ 1.b - 1.j. Further, AG ¶¶ 20(c) does not apply because he has not sought any financial counseling or debt repayment assistance, and he has not established that his financial problems are under control. In summary, Applicant has not submitted sufficient information to mitigate the Guideline F security concerns established by this record.

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 47 years old and presumed to be a mature adult. There is no available information about his reliability or trustworthiness that would support a prediction that his finances have improved so as to avoid more financial problems in the future. A fair and commonsense assessment⁹ of all available information bearing on Applicant's finances and truthfulness shows he has failed to address satisfactorily the government's doubts 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 in favor of the government.¹⁰

⁹ See footnote 5, *supra*.

¹⁰ See footnote 8, *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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a: | Against Applicant |
| Subparagraphs 1.b - 1.j: | For Applicant |
| Subparagraphs 1.k - 1.p: | Against Applicant |

Conclusion

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

MATTHEW E. MALONE
Administrative Judge