



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-08373
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)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

September 21, 2010

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 27, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) 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 to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the

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.

national interest to continue Applicant's access to classified information. On July 6, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)³ for criminal conduct (Guideline J) and financial considerations (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to an administrative judge on November 17, 2009. Pursuant to a Notice of Hearing issued on January 12, 2010, a hearing was convened on February 1, 2010. The parties appeared as scheduled; however, it was determined that Applicant had not received in advance of the hearing copies of the documents the Government intended to introduce.⁴ The administrative judge concluded that Applicant was not prepared to move forward and agreed to continue the hearing to an unspecified date. DOHA received a transcript of that hearing (Tr. I) on February 8, 2010.

The case was transferred to me on April 1, 2010. Pursuant to a Notice of Hearing issued on April 6, 2010, I reconvened the hearing in this matter on April 29, 2010. The parties appeared as scheduled. The Government presented eight exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 8. Applicant testified and submitted ten documents that were admitted without objection as Applicant Exhibits (Ax.) A - J. I left the record open after the hearing to give Applicant time to submit additional relevant information. DOHA received a transcript (Tr.) of the hearing on May 6, 2010. The record closed on May 7, 2010, when I received Applicant's post-hearing submission, which is included in the record without objection as Ax. K.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed about \$26,139 for 14 unpaid debts (SOR 1.a - 1.n) that were more than 90 days past due (SOR 1.k); that had been charged off as business losses by the creditors (SOR 1.g and 1.j); that represented the balance due after a vehicle repossession (SOR 1.i); or that had been referred to collection agencies (SOR 1.a - 1.f, 1.h, 1.l - 1.n). Applicant admitted all of the allegations under this guideline. However, as to SOR 1.h, 1.k, and 1.n, he also averred that he has paid or otherwise satisfied these debts.

Under Guideline J, the Government alleged that in September 2007, Applicant was charged with and convicted of violating a protective order, for which he was sentenced to 60 days in jail (suspended), placed on 12 months of probation, fined, and assessed court costs. (SOR 2.a) It was also alleged that the aforementioned protective order was issued on May 24, 2007, after he was investigated for harassing communications (SOR 2.b); that on May 7, 2007, Applicant was charged with domestic

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, E3.1.13. On September 30, 2009, Department Counsel sent the documents to the Applicant as required. It is not known why Applicant did not receive them.

violence in the form of 3rd degree harassment, of which he was convicted and sentenced to 60 days in jail (suspended), placed on 24 months of probation, assessed a fine and court costs, and ordered to complete a domestic violence intervention course (SOR 2.c); that in December 2006, he was charged with 3rd degree domestic violence, which was nolle prosequi, and he was assessed court costs and ordered to complete a domestic violence intervention course (SOR 2.d); and that in June 1996, Applicant was charged with and convicted of domestic violence, to wit, harassment (SOR 2.e). In response, Applicant admitted the SOR 2.d allegation, but denied the remaining allegations under this guideline.

Applicant's admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 37 years old and is employed as a security officer with a defense contractor, for whom he has worked since October 2007. He has held similar jobs with other companies since July 2001. His position requires that he hold a security clearance. Applicant was first granted a security clearance in 1998, when he was in the U.S. Army. Applicant enlisted in the Army in October 1994 and served on active duty until March 2001. Thereafter, he served in a reserve status in the Army National Guard from March 2001 until September 2003. He was recalled to active duty for a deployment to Afghanistan in 2003. He also receives a disability benefit for a knee injury he suffered after returning from Afghanistan. (Gx. 1)

Applicant was married from March 1994 until November 2001, when he and his wife divorced. He has one child, age 15, from that marriage. He also has two other children, ages 17 and 2. (Gx. 1) Each of the children live with their mothers. (Tr. 60) Applicant is currently paying child support by garnishment of his pay for the benefit of his children. (Tr. 60 - 61) An earlier arrearage of \$571 (SOR 1.n) has been repaid. (Ax. D)

When he submitted his e-QIP, Applicant disclosed that he was more than 90 days past due on several debts. The subsequent background investigation showed that, as alleged in SOR 1.a - 1.n, he owed approximately \$26,139 for at least 14 unpaid debts. (Gx. 2; Gx. 7; Gx. 8) Of those debts, Applicant has paid or otherwise resolved medical debts for \$150 (SOR 1.a), \$861 (SOR 1.b), and \$405 (SOR 1.c) (Tr. 66 - 67; Ax. J). He has also paid or resolved the \$493 unpaid telephone bill alleged at SOR 1.h (Ax. B), a \$309 debt for an unpaid cable bill alleged at SOR 1.j (Tr. 70; Ax. J), a \$1,886 past due mortgage account alleged at SOR 1.k (Tr. 71; Ax. J), and a \$636 debt for an unpaid credit card account alleged at SOR 1.m. (Tr. 71 - 72; Ax. J)

Applicant still owes approximately \$20,828 for six debts alleged in SOR 1.d - 1.g, 1.i, and 1.l. Of those debts, Applicant has enrolled the debts at SOR 1.f, 1.g, 1.i, and 1.l in a plan managed by a debt consolidation and repayment company. He entered into an agreement with that company sometime in April 2010, but as of the hearing date, he had not yet made any payments into that plan. (Ax. K; Tr. 68, 89) Applicant estimates the balance on the debt alleged at SOR 1.g is actually about \$13,418 instead of the \$8,986 listed in the SOR. (Tr. 69; Ax. J)

Applicant also disclosed in his e-QIP that he has been arrested for or charged with several criminal offenses relating to domestic violence. As of the date of his e-QIP, he was still awaiting trial on two charges – violation of a protective order and domestic violence / harassment. (Gx. 1) At his hearing, he further disclosed that he was awaiting trial on a new charge of domestic violence alleged to have occurred in December 2009. (Tr. 81)

Applicant's criminal record stems from his relationship with two women (Girlfriend 1 and Girlfriend 2) that started around the time of his divorce. Girlfriend 1 has filed numerous charges against the Applicant since 2007. As alleged in SOR 2.a, Applicant was arrested, charged, and convicted in September 2007 of violating a protective order obtained by Girlfriend 1. However, the charge arose when Applicant reported for his first day at work as required, only to see Girlfriend 1 in the same room at a "welcome aboard" presentation. (Ax. A) Two co-workers have corroborated Applicant's claim that he was required to be at the presentation, and that he did not know Girlfriend 1 worked at the same site. (Gx. 2) She reported his presence to company security personnel and later swore out a warrant for his arrest. (Gx. 4) After Applicant's conviction in district court, he appealed to the circuit court and requested a jury trial. The case was dismissed when Girlfriend 1 told prosecutor's she would no longer participate in prosecution of that case. (Gx. 2; Ax. E)

The protective order obtained against Applicant by Girlfriend 1 was originally to be in effect for ten years. She obtained the order in May 2007 after complaining that Applicant was calling her and harassing her as alleged in SOR 2.b, something Applicant has denied. In June 2008, Girlfriend 1 asked the court to withdraw the protective order. (Gx. 2)

In May 2007, before she obtained the protective order alleged in SOR 2.c, Girlfriend 1 and Applicant got into an argument when he asked her to return some money he had given her. He claims he never laid hands on her and that he tried to leave, but could not because she had hidden his car keys. Girlfriend 1 called the police, and, as alleged in SOR 2.c, Applicant was charged and convicted of domestic violence / harassment. Again, when he appealed this conviction to the circuit court, Girlfriend 1 did not cooperate with prosecutors and the charge was dismissed. (Gx. 2; Ax. G)

Applicant was in a relationship with Girlfriend 1 from 2001 until 2006, but he has continued to interact with her and, at times, supports her. (Tr. 75 - 77) In December 2009, she accused him of domestic violence / assault after an altercation at his house. The case is still pending trial. (Tr. 80 - 81) When asked why she was at his house, Applicant disclosed that she had been living there for the past two years. (Tr. 82) Girlfriend 1 moved out soon after the December 2009 altercation. (Tr. 87 - 88)

Applicant and Girlfriend 2 have a two-year-old child together. They have been in an on-again-off-again relationship since about 2006. However, their relationship has suffered due to the continued contact with Girlfriend 1. In December 2006, Applicant and Girlfriend 2 got into an argument at his house. He wanted her to leave, and when she refused, he grabbed her by the arm and forced her from the house. As alleged in SOR 1.d, Applicant was charged with 3rd degree domestic violence. With the consent of

the victim, the case was not prosecuted provided he complete an eight-week domestic violence intervention program. Applicant and Girlfriend 2 have a positive relationship, and she has vouched for his reliability and trustworthiness. (Gx. 2; Ax. H; Ax. J)

As alleged in SOR 1.e, Applicant was also charged with and convicted of domestic violence / harassment in June 1996. He got into an argument with his aunt and the police were called. Applicant averred that this was a simple argument that was a mistake blown out of proportion. (Gx. 2)

Applicant attributes his money problems to legal fees he has had to pay in response to the multiple criminal complaints by Girlfriend 1. He estimates he has had to pay in excess of \$10,000 for legal counsel. (Tr. 72) However, he did not present any bills from attorneys, he represented himself in response to Girlfriend 1's request for a protective order, and he was represented by a public defender or other court-appointed counsel in response to the charges against him in May 2007 and September 2007. (Ax. F; Ax. G)

Applicant has used debt consolidation and debt counseling firms over the past two years (Gx. 2; Ax. K), but there is no record that he has made payments on his remaining debts through those services. His current finances are further characterized by a negative monthly cashflow. (Gx. 2; Ax. J) Applicant's job performance record is excellent. He is highly regarded by co-workers and his supervisor. (Ax. I; Ax. J) He also performed well while he was in the Army and the National Guard. His military record contains multiple personal awards. (Ax. J)

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 policies in the 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 rehabilitation and other permanent behavioral changes;
- (7) the motivation

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

⁶ Directive. 6.3.

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.

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

Criminal Conduct

The Government presented information sufficient to support the allegations in SOR ¶¶ 2.a - 2.e. Between 1996 and 2009, Applicant was charged with several criminal offenses stemming from domestic altercations that allegedly escalated to some level of violence or harassment. The Government's information raises a security concern that is expressed at AG ¶ 30 as follows:

Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant has admitted that he was at fault in only one of the alleged offenses (SOR 2.d). He further relies on the fact that, although he was convicted of the offenses alleged through SOR 2.a - 2.c, the charges were dismissed when he appealed and his accuser did not testify. He also asserted that the offense alleged in SOR 2.e was a misunderstanding. The ultimate disposition of the charges in question does not negate the security significance of the fact that he was arrested and charged. The disqualifying conditions at AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*) applies

⁷ See *Egan*, 484 U.S. at 528, 531.

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

here. Further, his conviction on a 3rd degree domestic violence charge (SOR 2.d) and his admission of guilt in that case require application of the disqualifying condition at AG 31(a) (*a single serious crime or multiple lesser offenses*).

I also conclude that available information is not sufficient to support application of any of the mitigating conditions listed under AG ¶32. Applicant disclosed at the hearing that a new charge of domestic violence was pending against him, so the concerns about his conduct are recent. It may be the case, as Applicant has claimed, that Girlfriend 1 is accusing him of these offenses out of spite. However, the most recent charge arose, in large part, because Applicant allowed his accuser to live in his home for two years. Applicant continues to experience legal troubles because he has not acted to change his circumstances. Available information also shows that he has a history of domestic arguments that escalate into altercations. The burden was on Applicant to show that this is no longer the case, but questions about his record of criminal domestic conduct persist. On balance, he has failed to mitigate the security concerns raised by the Government's information under this guideline.

Financial

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 Government presented sufficient information to support the allegations in SOR 1.a - 1.n; that is, that Applicant accrued more than \$26,000 in delinquent debt since his divorce in 2000. Although he has paid or resolved several of the debts alleged in the SOR, he still owes approximately \$20,828 for six debts alleged in SOR 1.d - 1.g, 1.i, and 1.l. Thus, 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*).

By contrast, Applicant has not established that he will be able to repay his remaining debts or that his current finances are sufficiently healthy so as to avoid future financial problems. Further, Applicant claimed that his debts were largely the product of financial stress brought on by the costs of legal counsel in response to Girlfriend 1's false criminal charges against him. However, he did not support his claim with any corroborating information. It also appears that he was actually represented at no cost through public defenders or other court-appointed counsel. All of the information about the cause of his debt indicates it was likely due to his own mismanagement. While he has paid some of his debts, and he has engaged the services of debt consolidation firms, he has not established a track record of sound financial management, or a solid plan that shows his financial problems will be resolved in the foreseeable future. All of the foregoing precludes application of any of the Guideline F mitigating conditions under

AG ¶ 20. Accordingly, Applicant has failed to mitigate the security concerns about his finances.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F and J. 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 and is presumed to be a mature, responsible adult. While his record of military service and his on-the-job performance support that presumption, his record of domestic violence and his financial problems undermine such a characterization. The positive information about his military and professional experience is insufficient to overcome the persistent doubts raised by the Government's information about his criminal conduct and financial problems. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁹

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.c:	For Applicant
Subparagraphs 1.d - 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j, 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m, 1.n:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a - 2.e:	Against Applicant

⁹ See footnote 8, *supra*.

Conclusion

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

MATTHEW E. MALONE
Administrative Judge