



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-08375
)	
Applicant for Security Clearance)	

Appearances

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

August 19, 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 granted.

On April 9, 2008, Applicant submitted a Questionnaire for Sensitive Positions (QNSP) to renew a security clearance he has held for about 20 years through the military, and which he now requires for his civilian 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. Based on the results of the background investigation and his response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with

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.

the national interest to continue Applicant's access to classified information. On February 12, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the revised Adjudicative Guidelines (AG)³ under Guideline E (personal conduct) and Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on April 6, 2009. I convened a hearing on April 21, 2009, at which 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 proffered five exhibits (Ax. A - E), which were admitted without objection. I also left the record open to allow Applicant time to submit additional relevant information. Applicant's post-hearing submission was timely received and has been admitted without objection as Ax. F. DOHA received the transcript of hearing (Tr.) on May 7, 2009.

Procedural Issue

Under Guideline E, the government alleged through SOR ¶ 2.a that Applicant intentionally omitted from his security clearance application relevant information about his finances by answering "no" to question 28 (debts more than 180 days past due in the preceding seven years). Applicant admitted the omission, but he denied any intent to falsify or mislead. At the hearing, Department Counsel moved to withdraw this allegation. (Tr., 7) Without objection, and in accordance with Directive, E3.1.17, the SOR was amended to strike SOR ¶ 2.a. Accordingly, I have not applied the Guideline E adjudicative factors as part of this decision.

Findings of Fact

Under Guideline F, the government alleged Applicant owes approximately \$72,000 for ten delinquent or past due financial obligations. (SOR ¶¶ 1.a - 1.j) Applicant admitted, in part, and denied, in part, those allegations. In addition to the facts established through his admissions, and after reviewing the pleadings, the transcript, and exhibits, I have made the following findings of relevant fact.

Applicant is 42 years old and has been employed by a defense contractor since December 2007. Prior to that, he served for 21 years in the U.S. Army before retiring with an honorable discharge as a Staff Sergeant. His military service was exemplary, as shown by the numerous personal awards and commendations he received. While in the Army, he was primarily assigned as a logistics specialist. He has continued in that line of work through his civilian employment. His job performance appears to be excellent as shown by his recent receipt of a meritorious pay increase. (Gx. 1; Ax. D; Tr., 40 - 43)

Applicant and his wife have been married since September 1989. They have three children, ages 14, 11, and 9. (Gx. 1; Tr., 38) Applicant's last active duty

³ 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.

assignment was at an Army base in the midwest United States beginning in 2003. Applicant and his wife liked the area and financed the purchase of a new-construction home for \$161,500. With his wife working full time as a store manager for a national retail chain, they were able to meet all of their financial obligations. However, around 2002 or 2003, she began having undiagnosed physical problems which interfered with her ability to work. By 2005, Applicant's wife became unable to work at all. In 2007, Applicant was scheduled to return for a second deployment to Iraq, but the Army allowed him to retire instead, effective in February 2008, in view of his wife's medical problems.

Applicant was hired by a defense contractor in December 2007 and had to move his family. However, without a second income,⁴ he could not cover the two mortgages they already had on their house and pay rent in their new location. They had to sell their house or rent it to cover the mortgage. They were unable to do either and the mortgage was eventually foreclosed and the house sold at auction for \$138,600. (Gx. 2) Applicant still owes approximately \$33,000 on the first mortgage, but it is unclear if this is for the deficiency on his first mortgage after the house was sold at auction, or if it is for a balance past due before the mortgage went into foreclosure. (Gx. 3; Tr., 56 - 57) He also owes nearly \$19,000 for the balance of a second mortgage, which was not satisfied through the sale of the house. (Gx. 3; Tr., 37)

In addition to the problems with his mortgage, Applicant also incurred other delinquent debts. In all, credit reports obtained during his background investigation showed Applicant owed approximately \$22,434 for eight accounts. (SOR ¶¶ 1.a - 1.e, 1.h - 1.j) However, two of the debts (SOR ¶¶ 1.b and 1.i) have been removed from his credit history after Applicant showed they were not his. (Answer to SOR; Ax. A; Ax. F; Tr., 48 - 52, 69 - 71) Applicant has paid four of the debts (SOR ¶¶ 1.a, 1.c, 1.d and 1.j), and is paying \$200 each month to resolve a fifth (SOR ¶ 1.h). (Ax. A; Ax. F; Tr., 26 - 27, 37, 48 - 52) Finally, in October 2008, Applicant enrolled in a debt management and repayment plan wherein he originally paid \$487 each month to resolve the debts he still owes on his foreclosed mortgage and one other delinquent credit account (SOR ¶¶ 1.e - 1.g). His monthly payment was reduced to \$198 after the erroneous accounts were removed from his credit history. The plan is intended to have his debts paid or resolved in three years. (Gx. 2; Ax. A; Ax. F; Tr., 51 - 55, 73)

Applicant is also trying to resolve the debts related to his mortgage foreclosure through a DoD assistance program. The Department of Defense Homeowners Assistance Program (HAP) is designed to provide financial assistance to military and some DoD civilian employees who have lost money through declining property values when they have had to sell their houses. Applicant has applied for such benefits and submitted information about the assistance for which he thinks he will be eligible. However, Applicant's information (Ax. B) and the information available at the HAP web page show that this program is aimed at persons who have had to move because of the DoD Base Realignment and Closure (BRAC) initiative. If he is eligible for assistance,

⁴ After they relocated, his wife was definitively diagnosed with a degenerative neurological disorder, which, although partially manageable, is eventually terminal.

Applicant expects that his mortgage obligations will be satisfied in whole or in part. He also understands that he will incur a taxable income benefit as a result of any assistance or debt forgiveness that may occur. For now, however, he is repaying his mortgage-related debts through his debt management and repayment plan. (Tr., 58 - 60, 73 - 74).

Applicant earns approximately \$5,658 each month from his defense contractor pay, a disability benefit from an active duty injury, and his Army retired pay. He is current on all of his present obligations, such as rent, car notes, and other recurring monthly obligations. After all of his expenses, including the debt repayment plan, are paid each month, Applicant estimates that he is able to save about \$800. (Ax. F; Tr., 65 - 69)

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 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 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

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

⁶ Directive. 6.3.

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 government presented sufficient information to support the allegations in SOR ¶¶ 1.a - 1.j. The facts thus established show that Applicant owed approximately \$72,000 in delinquent debts comprised of two delinquent mortgages and numerous delinquent personal credit accounts. The resulting 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.

More specifically, 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 shown that his financial problems arose from unusual circumstances that were beyond his control. It is likely that, had his wife not become ill, he would have remained in the Army and his family would have remained in the house they eventually lost. He has further demonstrated through a proactive approach to resolving his debts, that his financial problems are not indicative of a defect in his judgment or reliability. He has paid or resolved the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.j. He is making monthly payments on the debt listed in SOR ¶ 1.h, and the debts listed in SOR ¶¶ 1.e, 1.f, and 1.g are being paid off through a debt management and repayment plan that Applicant had entered into before the SOR was issued. Applicant also has been trying to resolve his mortgage-related debts through a DoD-sponsored assistance program; however, it does not appear that he will be eligible to participate in that program. Even if he does not receive that assistance, he will continue

⁷ See *Egan*, 484 U.S. at 528, 531.

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

to pay off the debts left from his foreclosure. As to the debts in SOR ¶¶ 1.b, 1.h, and 1.i, Applicant established that those were for credit accounts that were not his, and they have been removed from his credit history. Applicant also showed that his current finances are sound and that he has a sufficient positive monthly cash flow that will allow him to resolve his remaining debts while avoiding future financial difficulties.

All of the foregoing requires 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*) (emphasis added), 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*), and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). On balance, Applicant's information is sufficient 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 42 years old and, through his military service and the actions he has taken to resolve his financial problems, has demonstrated he is a mature, responsible adult. He has established that his financial problems represent only a brief portion of his background, and that he did not intentionally or knowingly mismanage his finances. Applicant's past record of integrity and reliability in his Army service and the good health of his current financial circumstances make it exceedingly unlikely that he will experience such problems in the future or that he would act contrary to the national interest to resolve his past delinquencies. A fair and commonsense assessment⁹ of all available information bearing on Applicant's finances shows he has mitigated the security concerns raised by the government's information.

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: FOR APPLICANT

Subparagraphs 1.a - 1.j: For Applicant

⁹ See footnote 6, *supra*.

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge