



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-08749
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)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

February 24, 2010

Decision

MALONE, Matthew E., Administrative Judge:

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

On March 21, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of Applicant’s background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two sets 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

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

finding² that it is clearly consistent with the national interest to grant Applicant's request for access to classified information. On May 11, 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 F (financial considerations).

On August 17, 2009, Applicant responded to the SOR and requested a decision without a hearing. On October 22, 2009, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the government's preliminary decision. Applicant received the FORM on November 13, 2009, and timely responded to the FORM in a two-page submission dated November 30, 2009. The case was assigned to me on February 1, 2010.

Findings of Fact

The government alleged Applicant owed approximately \$47,369 for ten delinquent debts listed in SOR ¶¶ 1.a - 1.j. In response to the SOR, Applicant admitted without explanation all of the allegations. In addition to the facts established through Applicant's admissions, I make the following findings of relevant fact.

Applicant is 42 years old and has been employed by a defense contractor since September 2006. He served in the United States Navy between October 1986 and November 2006, when he retired as an Engineman First Class (EN1). He and his wife have been married since June 1991. (FORM, Items 4 and 7)

In March 2008, when Applicant submitted his e-QIP, he answered "no" to all of the questions pertaining to his finances (debts, bankruptcy, garnishments, etc.) However, a credit report obtained during his background investigation showed he was delinquent or seriously past due on numerous debts totaling in excess of \$47,000. Some of his debts are being satisfied through civil judgments and involuntary garnishment. (FORM, Items 5, 6, and 11)

In June 2008, when he was interviewed by a government investigator, he acknowledged that he and his wife "simply got in over their heads and [were] just starting to address these financial issues." (FORM, Item 7) In response to DOHA interrogatories in November 2008, he reiterated that he was paying off his debts "slowly." (FORM, Item 6) Applicant has not presented information that shows he has paid or otherwise resolved any of the debts listed in the SOR. Two of those debts (SOR

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

³ 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. Pending official revision of the Directive, the revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included 14 documents (Items 1 - 14) proffered in support of the government's case. I have not considered Item 12 as it appears Department Counsel himself obtained this document in October 2009. Further, Items 13 and 14 do not constitute evidence in support of any of the SOR allegations.

¶¶ 1.e and 1.f) are for less than \$100 each and have been delinquent for almost two years. (FORM, Items 5 and 8) When he responded to the FORM in November 2009, he asked that his clearance be revoked because he is still paying off his debts “and it is going to take a while to do that.”

Policies

Each security clearance decision must be a fair, impartial, and commonsense 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).⁵ 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 factor 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 concern and adjudicative factors under AG ¶ 18 (Guideline F - financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁶ 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.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

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

requisite judgment, reliability and trustworthiness of one who will protect the national interest 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:

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 available information supports the allegations in SOR ¶¶ 1.a - 1.j. Further, Applicant admitted each of the alleged debts, which total more than \$47,000. Several of Applicant’s delinquent debts have been unaddressed since mid-2005, and he has acknowledged that one cause of his debt problems was that he and his wife did not manage their finances properly. Available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), AG ¶ 19(c) (*a history of not meeting financial obligations*), and AG ¶ 19(e) (*consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*).

In response, Applicant has not provided information to support any claims that he is paying off or otherwise resolving his debts. Further, there is no information to suggest that his debts arose through unusual circumstances or events beyond his control. Applicant has not demonstrated that he has done anything, such as obtain financial counseling or other professional guidance, to improve his financial standing. Finally, he has not indicated that he is disputing any of debts attributable to him. Accordingly, none of the mitigating conditions listed at AG ¶ 20 apply, and Applicant has failed to mitigate the security concerns established by the government’s 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 is 42 years old and presumed to be a mature adult. His marriage of 18 years and his 20 years of military service reflect a stable, responsible lifestyle. However, the weight of the information presented shows he has failed to meet his financial obligations over the past several

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

years. He has not acted to resolve even the smallest of his debts despite being interviewed about his finances almost two years ago. There is no information in this record about any other facet of his background that sufficiently counters the adverse information underlying the security concerns about his finances. A fair and commonsense assessment⁹ of all available information bearing on Applicant's finances shows he has failed to address satisfactorily the government's doubts about his suitability for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the national interest.¹⁰

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.j:	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 a security clearance. Eligibility for access to classified information is denied.

MATTHEW E. MALONE
Administrative Judge

⁹ See footnote 5, *supra*.

¹⁰ See footnote 8, *supra*.