



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-10465
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

January 12, 2010

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for eligibility for a security clearance is granted.

On or about July 25, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain a security clearance required in connection with his work for 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 obtain clarification of, and/or additional information about potentially disqualifying information in his background. After reviewing the results of the background investigation, including Applicant's 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 allow him access to classified information. On April 22, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the revised Adjudicative Guidelines³ under Guideline F (financial considerations).

On May 19, 2009, Applicant responded to the SOR and requested a hearing. The case was assigned to me on July 24, 2009, and I convened a hearing on August 27, 2009. The parties appeared as scheduled. The government presented four exhibits, which were admitted without objection as Government Exhibits (Gx.) 1 - 4. Applicant testified but presented no documents. DOHA received the transcript of hearing (Tr.) on September 4, 2009. The record remained open after the hearing to give Applicant time to submit additional relevant information. On September 16, 2009, I received Applicant's post-hearing submission. It has been admitted into the record without objection as Applicant's Exhibit (Ax.) A.

Findings of Fact

Under Guideline F, the government alleged that Applicant owes approximately \$50,764 for 24 delinquent debts (SOR ¶¶ 1.a - 1.x) that, as of April 14, 2009,⁴ remained unpaid. Applicant admitted with explanation each of these allegations. In addition to the facts established through his admissions, I have made the following findings of relevant fact.

Applicant is 45 years old and is seeking a security clearance in connection with his employment as an engineer for a large defense contractor. He has held that position since April 2008. He and his wife have been married since October 1995. They have three children (ages 8, 6, and 4). Applicant's wife is a stay-at-home mom who home-schools their children, but brings in no additional income. In early 2008, their middle child was diagnosed with autism. Notwithstanding the fact the child is high functioning, Applicant and his wife have had to provide (often at their own expense) physical therapy, speech therapy, behavioral therapy, occupational therapy, and other medically related services from neurologists and pediatricians. From about May 2008 through June 2009, he paid about \$800 each month for autism treatment services. In June 2009, he received a grant that now offsets by about \$400 Applicant's monthly medical expenses.

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 take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ SOR ¶¶ 1.n - 1.u erroneously alleged the debts remained as of August 14, 2009. As noted by Applicant in his response to the SOR, and by Department Counsel at hearing (Tr. 8 - 9), the date listed was a typographical error. Accordingly, the parties agreed that the SOR should be amended to indicate that the debts in SOR ¶¶ 1.n - 1.u were unpaid as of April 14, 2009.

Applicant was steadily employed from March 1998 until May 2007, when he was laid off. He supported his family through unemployment benefits and whatever he could earn as a self-employed network and server engineer. After he was laid off, Applicant had no health insurance until he began his current job, which added to his debts. Even with the health benefits through his current employer, he incurred additional medical expenses of about \$3,000 when his wife suffered a miscarriage in October 2008. (Gx. 2). The day he began work with his current employer, Applicant was in a car accident in which his car was totaled, and which caused him to incur additional costs to replace his ability to get to work. During Applicant's period of unemployment and under-employment, Applicant's father died. His mother died about two weeks before the hearing. Applicant testified that neither event had much financial impact on him, but that the only proceeds available to him from their estate will be the sale of their home, valued at about \$36,000. (Tr. 15, 23, 31 - 33, 52 - 53)

After Applicant was laid off, he and his wife used credit cards to offset their loss of income. They were also unable to stay current on payments to many of their credit card accounts, which already had balances on them when he became unemployed. Available information shows that he owes approximately \$33,492 for six delinquent personal credit cards (SOR ¶¶ 1.d, 1.f, 1.h, 1.i, 1.t, 1.w). Applicant is paying \$125 monthly to the SOR ¶ 1.f debt of \$2,375. Otherwise, his credit card debts have not been paid or otherwise resolved. He also owes approximately \$15,317 for 10 other retail credit accounts (SOR ¶¶ 1.e, 1.g, 1.j - 1.n, 1.s, 1.u, 1.x). These debts have not been paid or otherwise resolved. Applicant disputes that he owes \$530 for unpaid rent as alleged in SOR ¶ 1.c. He asserted that he gave sufficient notice to break the month-to-month lease of his residence in 2002. This debt remains unresolved. (Tr. 35 - 37) A \$208 delinquent electrical bill alleged in SOR ¶ 1.b arose when Applicant moved into his current residence in 2005. It remains unpaid, but Applicant testified he has been current on all of his utilities while in that residence. (Tr. 35)

Five of the listed debts (SOR ¶¶ 1.a, 1.o, 1.p - 1.r, 1.v) are unpaid medical bills totaling \$1,217. He testified that he has paid the four debts (SOR ¶¶ 1.a, 1.o, 1.p, 1.r) that were less than \$100 each. His unpaid medical bills arose when he needed care for his family but did not have medical coverage while he was unemployed. Aside from the delinquent medical bills listed in the SOR, Applicant testified that he previously paid between \$2,000 and \$2,500 in medical bills. (Tr. 27 - 29)

While Applicant was unemployed, he was unable to pay his rent as required. He managed to pay on time until October 2007, and eventually accrued a \$5,000 arrearage, which he has been repaying by adding \$400 to his rent payments each month since he was hired in April 2008. Applicant finished those payments in August 2009. He has also repaid several smaller unpaid medical bills (SOR ¶¶ 1.a, 1.o, 1.p, and 1.r; Tr. 35, 41 - 42)

When Applicant responded to DOHA interrogatories in January 2009, he submitted a Personal Financial Statement (PFS) that showed he had only about \$135 remaining each month after expenses, which included \$1,900 in debt and back rent repayments. He is now receiving about \$400 each month to offset the cost of treating

his autistic child, and an additional \$400 each month, previously paid for back rent, is now available for debt repayment. (Gx. 2)

Applicant has not consulted formally with a financial counselor. He has not sought professional advice about filing bankruptcy or taking other corrective measures. (Tr. 33 - 34) Applicant has not incurred any additional debt since he has been employed. The only credit card he now has was issued to him by his employer for work-related expenses. (Tr. 33)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ 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 only 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 prove controverted facts alleged in the SOR.

⁵ Directive. 6.3.

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

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 to classified information 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 allegation in SOR ¶ 1.a - 1.x; that is, that Applicant accrued almost \$50,000 in delinquent personal debt through April 2008. Applicant is making payments on one credit card debt, and he has paid some of the smaller medical debts attributable to him. Further, he disputes a debt for unpaid rent from 2002. However, those debts account for only 2% of the total debt he owes. Applicant did not submit any information to show that he has paid or resolved any other of his debts, which have been delinquent for up to two years. I conclude the record supports those allegations and 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, available information shows that Applicant, the sole income earner for his family, was either unemployed or under-employed for a year before he was hired by his current employer in April 2008. His loss of income resulted in several delinquent debts, caused him to fall behind on his rent, and kept him from staying current on whatever debts he already had when he was laid off. Earlier in 2008, one of his children was diagnosed with autism, which has resulted in additional expenses despite having health coverage through work. After he was hired by his current employer, Applicant began repaying \$5,000 in past due rent, a process he completed before the hearing.

⁷ See *Egan*, 484 U.S. at 528, 531.

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

He has also paid smaller debts as his income allows. His current finances reflect that he has not incurred any new debts, and that, thanks to an assistive grant for the treatment of his autistic child, he has at least \$500 remaining after expenses, which include ongoing repayments of past due debts.

Available information requires 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*); 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*).

The ongoing presence of significant of unpaid delinquent debt does not automatically mean Applicant should be disqualified. This amount of debt certainly raises the possibility that Applicant could resort to illegal means to get money to pay his debts. However, the analysis here must also consider, regardless of the amount, Applicant's response to his adverse financial circumstances and his overall approach to money management. Applicant established that he has been paying what he can since his income returned. His ability to repay his debts has been hampered by expenses arising from his wife's miscarriage, a car accident, which totaled his car, and medical expenses for his autistic child. Available information also shows that he has a positive monthly cashflow that will enable him to continue making payments. On balance, I conclude that the security concerns about his unpaid debt are mitigated.

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 45 years old and presumed to be a mature, responsible adult. Indeed, he is a dedicated father and husband, who is doing what he can to overcome unforeseen financial and personal setbacks. He knows he must repay a critical mass of personal debt. His first priority was to repay \$5,000 in back rent so he could keep his family in the home they have occupied since 2005. Applicant was been candid and forthcoming about his finances in his application for clearance, and in his response to DOHA interrogatories. There has been no financial or other misconduct on his part, and his difficulties have been limited to a two year period of unemployment and subsequent recovery. Applicant's testimony at the hearing was likewise straightforward. As for documentation of his actions to repair his finances, the resolution of his past due rent in the year before the hearing supports his claimed intent to satisfy his debts now that he is again employed. Available information about his income and expenses shows that much of his monthly expenses has been directed at debt payments. His continued employment, actions to date, and positive cashflow make it likely that he will continue to resolve his debts and that he will not incur new unpayable debts. A fair and commonsense evaluation of this record

shows that the security concerns raised by Applicant's credit history are mitigated, and his finances do not put him at risk of acting contrary to the national interest.

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.x:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge