



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-11159
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

March 31, 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 August 12, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for his work as 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 two sets 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, as well as Applicant's responses 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 May 13, 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 June 10, 2009, Applicant responded to the SOR and requested a hearing. The case was assigned to me on September 21, 2009, and I convened a hearing on November 19, 2009. The parties appeared as scheduled. The government presented four exhibits, which were admitted without objection as Government Exhibits (Gx.) 1 - 4, and the Applicant testified on his own behalf. The record remained open after the hearing to give Applicant time to provide additional relevant information; however, nothing further was submitted. The record closed on December 4, 2009, and DOHA received the transcript of hearing (Tr.) the same day.

Findings of Fact

The government alleged under Guideline F that Applicant owes approximately \$40,815 for seven delinquent debts (SOR ¶¶ 1.a - 1.g) that, as of April 24, 2009, remained unpaid. In his response to the SOR, Applicant admitted with explanation the allegation in SOR ¶ 1.a, but denied with explanation the allegations in SOR ¶¶ 1.b - 1.g. In addition to the facts established through the pleadings, I have made the following findings of relevant fact.

Applicant is 58 years old, and has worked for the same defense contractor since June 1998. Applicant has been married three times. He and his first wife divorced in March 1971 after only three months of marriage. His second marriage began in May 1973, produced three children (one is deceased and the other two are in their 30s), and ended in May 1982 through divorce. Applicant and his current wife have been married since March 2008. Applicant is a Vietnam veteran who served in the Navy from 1970 - 1974, and he has held an industrial security clearance without incident for at least 11 years. (Gx. 1; Tr. 53 - 54)

Between 1999 and 2006, Applicant lived with a woman who, without his knowledge or permission, ran up the balances on his credit cards and forged his name on checks for cash. He would have lost his house and car had he not been making those payments automatically from his checking account. He was unaware of her conduct until sometime in 2003, when his pay was garnished to satisfy a delinquent debt. Thereafter, he was also arrested and charged with uttering checks with insufficient funds. The charges were dismissed after he convinced the court that his girlfriend had forged the checks. Until then, because he worked long days at both his contractor job

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.

and extra jobs on the side (Tr. 28, 55), Applicant relied on his girlfriend to take care of their finances. After he learned of her actions, he took possession of his credit cards and hid them. After a long period of inactivity, however, the cards were reissued and his girlfriend was again able to intercept them and continue her spending at his expense. Applicant tried to evict his girlfriend in 2003, but she attempted suicide in response to gain emotional leverage. He was eventually able to get her to leave in 2006. (Answer to SOR; Gx. 1; Gx. 2; Tr. 36 - 37)

Applicant testified that his ex-girlfriend is currently in jail for having shot someone over money. (Tr. 58) He also averred that she has a history of financial crimes. This claim is supported by the information he submitted in response to DOHA interrogatories. (Gx. 2)

Applicant has repaid all but two of the debts listed in the SOR, and he has been working since 2006 to resolve the debts his girlfriend caused. (Gx. 2; Tr. 41 - 52) There were several other debts he satisfied after his girlfriend left that were not examined during his background investigation. (Tr. 56) Applicant disputes the actual amounts owed on the two unpaid debts (SOR ¶¶ 1.d and 1.e). As to SOR ¶ 1.d, Applicant averred that the debt is actually \$12,000, which he is willing to pay, but that it is being reported as \$32,000 because of fees and interest charged by collection agencies. He was trying to work with the creditor in SOR ¶ 1.e, but has not heard anything from that creditor for several years. At one point he sent them \$700, but the creditor began taking money from his bank account without his permission. (Answer to SOR; Tr. 27 - 29)

Applicant's current finances are sound, as reflected in a personal financial statement he submitted in January 2009. (Gx. 2) A review of the statement at hearing showed that little has changed and that he has about \$1,200 remaining each month after expenses. The debt alleged at SOR ¶ 1.c arose when he was injured on the job in 2007, and was a combination of a shortfall in his medical insurance coverage and his reduced income while he was on short-term disability. He is currently awaiting word on a request to be placed on long-term disability due to recurring back and lung problems. However, his house is paid for and he has incurred no new debts that he cannot pay. He has no excessive credit card debt and he has never missed a car payment. (Tr. 61 - 66)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ 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:

⁴ Directive. 6.3.

(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 interest⁵ 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. 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.⁶ 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.⁷

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

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.g; that is, that Applicant owed \$40,815 for seven delinquent debts. Available information, including his response to interrogatories and his response to the SOR, showed that, despite having resolved the debts in SOR ¶¶ 1.a - c, 1.f and 1.g, he still owed about \$38,000 for the debts alleged in SOR ¶¶ 1.d and 1.e. Accordingly, 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, which was supplied largely through Gx. 2, shows that Applicant's financial problems were caused by his ex-girlfriend. Applicant also established that he has been working since 2006 to pay or resolve all of the debts attributable to him by the government's information, whether he incurred them or not. The record supports his claims that his ex-girlfriend had a history of relieving others of their money through deception. Finally, Applicant established that his finances are sound, that he is meeting his current obligations, and that he is not likely to resort to illegal means to resolve his remaining debts. Thus, available information supports consideration 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*); and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). On balance, I conclude that Applicant has mitigated the security concerns 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 a mature, responsible 57-year-old defense contractor with a history of stability in the workplace as a long-term employee. His current financial health is sound despite the adverse information in the record, and he has held a clearance without incident since 1998. While he acknowledges that his decision making in response to his girlfriend's conduct was not initially sound, in the past three years he has accepted responsibility for the debts attributable to him even though they arose largely through the malfeasance of another. The circumstances that caused his financial problems are not likely to recur and, because Applicant has acted to resolve his debts, do not pose an unacceptable

risk relative to his access to classified information. A fair, commonsense⁸ evaluation of this record shows that Applicant has satisfactorily addressed the doubts raised by the government's information about his ability or willingness to protect the government's interests as his own.

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.g: 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

⁸ See footnote 5, *supra*.