



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



In the matter of)	
)	
)	ISCR Case No. 08-11979
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

August 17, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

On July 22, 2008, Applicant submitted a security clearance application (Standard Form 86) to request a security clearance required as part of his

employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

On February 2, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).² In his Answer to the SOR, signed and notarized on March 19, 2009, Applicant admitted all the allegations under Guideline F. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on May 1, 2009 and the case was assigned to me on May 4, 2009. DOHA issued a Notice of Hearing on May 5, 2009 and I convened the hearing as scheduled on May 28, 2009. During the hearing, the government offered three exhibits, marked as Government Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified, and offered five exhibits, which were marked as Applicant's Exhibits (AE) A through E and admitted without objection. He did not present witnesses or character references. DOHA received the transcript on June 4, 2009.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, 30 years old, completed one year of college courses in 1997, plus several additional courses since then. He is currently employed as a project manager for a defense contractor. He married in 2002 and divorced in 2005. He has one seven-year-old son, who lives in Germany with Applicant's ex-wife, a U.S. Army member. Applicant served in the Army from 1998 to December 2007 as a petroleum supply specialist, and was honorably discharged as a Staff Sergeant (E-6). He saw combat during his service in Iraq, from April 2003 to July 2004. His wife served at the same time in the same division, and while both parents were deployed, their son, who was approximately one-and-a-half years old at the time, lived with a German family. After leaving active duty, Applicant

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² 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. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

joined the Army Reserves. Currently, he is in the Inactive Reserve (GE 1; Tr. 34, 37-39, 41-42, 46-48, 52-53).

Applicant's divorce in 2005 affected him financially. His wife retained most of their goods. Applicant used credit cards and the military exchange service to set up a new household. The military exchange debt of \$4,000 to \$5,000 became delinquent.³ The Internal Revenue Service applied his 2008 federal income tax refund to this debt. However, Applicant was able to stay current on most of his other debts while he was on active duty (AE A; Tr. 20-21).

In 2007, Applicant decided to leave military service and accepted an offer for a position that was to begin when he detached. After he submitted his papers, and two weeks before detachment, the employer informed him that the contract had been lost and the position was no longer available. Applicant decided to relocate to Puerto Rico, where he was born and has relatives. He expected to be able to find employment, and also rely on his Reserve pay, and bonuses amounting to approximately \$10,000. He planned to attend college with funding through the G.I. bill (GE 2, 3; Tr. 21, 44-45, 50, 70).

Applicant bought a new car in June 2007, several months before leaving military service, for \$22,000. His monthly payments were \$600. He contacted the creditor who held his car loan about transporting his car to Puerto Rico. He was informed that he could not take it because the loan was not paid in full. However, he was told that because he was moving on military orders, he could return the car, which would not be considered a repossession, and he would owe no further payments. Relying on this advice, Applicant returned the car. However, the unpaid balance (allegation 1.c.) now appears on Applicant's credit bureau report. When he contacted the company, he was referred to a collection agency. He is upset that he was given false information. However, he agrees the debt is his responsibility, and he intends to pay it. He is awaiting further information from the collection agency (GE 2; Tr. 19-20, 65-68, 74).

Applicant lived in Puerto Rico from December 2007 to April 2008. After he completed college courses, he was informed that the G.I. bill would not cover them because they did not lead to a degree. He drilled with the Reserves, but did not receive the drill pay until after he returned to the United States. He purchased a new car, but surrendered it to the dealer after one or two months when he realized he could not make the payments.⁴ Applicant was unable to find a position in Puerto Rico and was unemployed for approximately four months. He decided the best way to pay his mounting bills and support his son was to seek employment in the United States (GE 2, 3; Tr. 21-22, 50-51, 75).

³ This debt is not alleged in the SOR and is not a determining factor in my conclusions.

⁴ In about mid-2008, Applicant contacted the creditor and was told that the car had been sold, and he did not owe a balance. However, the account appears on his credit bureau report as a past-due debt. This debt is not alleged in the SOR and is not a determining factor in my conclusions.

Applicant returned to the United States in about April 2008. He had no funds and was homeless and “on the streets” for two weeks. Between April 2008 and 2009, he obtained several positions with defense contractors, steadily increasing his salary, until joining his current employer. Between mid-2008 and early 2009, Applicant started paying on bank loans and credit cards that were past due (unalleged), each of which amounted to several thousand dollars. The 2008 and 2009 credit bureau reports show that these accounts are either closed or up-to-date. The bills alleged in the SOR are those that he was not able to pay over the past year. As of the date of the hearing, he was beginning to pay on the SOR debts. Some of the creditors he contacted would not accept payment plans, and Applicant was unable to pay the balances in one payment. He was also hesitant to commit to payment plans because if he lost his security clearance, and his job, he would be unable to complete the plan. Applicant testified that he expects to have all the SOR debts paid by December of this year, with the exception of the car loan alleged at 1.c., which will take longer to pay (GE 2, 3; AE C; Tr. 22-25, 51).

In his first position after returning to the U.S., Applicant’s annual salary was \$40,000. He worked a partial year in 2008, and his income tax return shows total income of \$36,813. He increased his income to his current gross annual salary of \$65,000, and he has a job offer for a position that would pay \$85,000. His gross monthly take-home pay is approximately \$3,300. Applicant pays child support of \$350 per month. He shares an apartment and his portion of the rent is \$900 per month, including utilities. His monthly net remainder is approximately \$100. He purchased a four-year-old car in December 2008. His monthly car payment is \$430 and the loan is up-to-date. He has about \$60 in a checking account and no savings. He has no credit card accounts. Applicant has not attended financial counseling (AE D, E⁵; Tr. 25-26, 35, 47-48, 72-74, 96-101).

All of the debts alleged in the SOR, totaling almost \$28,000, became delinquent between February and June 2008. The current status of each follows.

- **Credit card - \$4,991** (allegation 1.a.): Applicant planned to begin paying the debt and contacted the creditor. However, at about that time he learned of an unanticipated debt to the state department of motor vehicles, and used his savings to pay that debt instead. He contacted the creditor again in approximately March 2009 to explain his situation. He intends to pay the bill but does not have a payment plan in place (GE 3; AE B; Tr. 54-62).
- **Computer purchase - \$2,378** (allegation 1.b.): Applicant bought a computer in 2007 for approximately \$1,200. He contacted the collection agency in March 2009 hoping to establish a payment

⁵ AE D and E are unsigned and undated copies of Applicant's 2008 federal and state income tax returns.

plan of \$100 to \$200 per month, but the agency demanded a \$500 initial payment and followed by three \$600 monthly payments. Applicant could not afford the arrangement, and the situation remains unresolved (GE 1, 2, 3; AE B; Tr. 39, 62-65).

- **Auto loan - \$18,995** (allegation 1.c.): As discussed previously, Applicant was told this car loan would be discharged because he was returning the car before leaving the country on military travel orders. However, the balance of the loan appears on Applicant's credit report. He intends to pay the debt but does not have a payment plan in place (GE 2, 3; Tr.66-68, 74).
- **Telephone debt - \$182** (allegation 1.d.): Applicant paid the debt in full and provided supporting documentation (GE 2; AE C; Tr. 78-79).
- **Cable service debts - \$540; \$278** (allegations 1.e. and 1.f.): Applicant and his mother lived together in the United States before his move to Puerto Rico. When he left, she moved to another state and took the cable receivers with her, resulting in the debt of \$278. His mother later returned the receivers and the company is currently verifying their return. Applicant believes that he no longer owes the debt. Applicant disputes the debt for \$540 because the company continued to charge him for service for January through March 2008, after he left the United States, despite Applicant's providing notice that he was leaving. He offered no documentation to support his contentions as to the status of these two debts (GE 2; Tr. 80-84).
- **Credit card - \$592** (allegation 1.g.): Applicant contacted the company shortly before the hearing and arranged a payment plan of \$200 per month for three months. The first payment was to be made the day after the hearing, when Applicant would receive his paycheck. Applicant provided no supporting documentation during or after the hearing concerning this payment plan (GE 2; Tr. 24; 84-87).

Policies

Each security clearance decision must be a fair, impartial, and common-sense 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).⁶ Decisions must also reflect

⁶ Directive 6.3

consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine 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 Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ 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.⁸ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his 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.⁹

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). Applicant was unable to pay his debts in early 2008, and several of these debts remain unpaid, indicating a history of failure to meet financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and,

Applicant's debts occurred under circumstances that are unlikely to recur. They accrued following his detachment from military service, and a subsequent period of unemployment. He has now been employed for approximately one-and-one-half years with a steadily increasing salary and, given that he was not indebted while he was receiving a steady income in the Army, it is unlikely he will accrue new debts. Applicant's testimony was credible and his trustworthiness is not in question. AG ¶ 20(a) applies.

The circumstances that caused Applicant to become indebted were beyond his control. Just before and after Applicant left military service, a confluence of events caused his previously stable financial situation to deteriorate: the 2007 job offer in the United States was withdrawn; the G.I. bill benefits that might have paid for his schooling did not apply; and he did not receive his 2008 Reserve pay until months after he completed the drills, and had left Puerto Rico. However, his debts also resulted from several irresponsible financial choices. Applicant not only purchased a car before his 2007 job offer materialized, but it was a new car with a high monthly payment. He also selected college courses before ensuring that they would meet the requirements for coverage by the G.I. bill, and before obtaining employment to help with expenses. In addition, he purchased another new car on his arrival in Puerto Rico, also before obtaining employment. Although Applicant acted responsibly by paying debts once he secured steady employment in the United States in 2008, his actions in 2007 and early 2008 did contribute to his delinquencies. Only partial mitigation can be applied under AG ¶ 20(b).

Neither AG ¶ 20(c) nor AG ¶ 20(d) applies. Applicant's financial situation is not under control. He owes more than \$27,000. Most of the SOR debts are unpaid, with no substantiated payment plans in place, and no documentation to support his claims of contacts with the creditors. Without documentation, a good-faith effort to resolve debts cannot be substantiated.

Applicant disputes the cable debt at ¶ 1.e. because it represents charges for a time period after he discontinued the service. Again, he provided no evidence, such as dated bills, written notice of his move, or any other documentation that would support his dispute. AG ¶ 20(e) does not apply. Although Applicant receives some mitigation based on AG ¶ 20(a) and (b), I conclude that it is insufficient to outweigh the disqualifying conditions. I find against Applicant under Guideline F.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

- (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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's credit bureau reports show that, in the past, he had a significant number of open accounts, but he was able to keep most of them current while he was in the military. However, the loss of an expected civilian position in 2007 set a series of events in motion that Applicant did not anticipate. Given that he was in his late 20's at the time, his poor financial decisions in 2007 and early 2008 may result in part from inexperience and a lack of sound financial judgment. Numerous debts became delinquent in early 2008 because of unemployment, unanticipated school expenses and late Reserve drill payments. However, his questionable decisions to buy new cars, rely on employment that did not materialize, begin college courses before he knew if they would be covered by the G.I. bill led to a significant debt load. Applicant paid one debt, but did not set up payment plans or provide evidence to support his claimed efforts to resolve the rest. As a result, he still carries more than \$27,000 in debt, with no documented plan in place to resolve it.

Applicant made efforts to bring his finances under control and succeeded in bringing several accounts current. However, a significant amount of debt is unresolved. An applicant is not required to be debt-free, or establish that he paid every debt. But he must demonstrate that he established a plan to resolve his debts and has taken significant action to implement that plan. Considering that Applicant has not established such a plan, it would be premature at this point in time to grant him access to classified information.

This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended based on Applicant's current circumstances, but should he be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established a record of payments with supporting documentation, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised about his

suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a. - 1.c.	Against Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e. – 1.g.	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge