



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-12005
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Applicant for Security Clearance)

Appearances

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

November 9, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, the government’s exhibits (Gx.), Applicant’s exhibits (Ax.), and Applicant’s testimony, his request for a security clearance is denied.

On August 7, 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 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 for a clearance. On February 25, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise

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

security concerns addressed in the revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations).

On May 27, 2009, Applicant provided a written notarized response (Answer) to the SOR, with one attachment,³ and requested a hearing. The case was assigned to me on June 18, 2009. Pursuant to a Notice of Hearing issued on July 6, 2009, I convened a hearing on July 29, 2009, at which the parties appeared as scheduled. The government presented three documents included in the record without objection as Gx. 1 - 3.⁴ Applicant testified and submitted two documents admitted without objection as Ax. A and B.⁵ DOHA received the transcript of hearing (Tr.) on August 6, 2009. Additionally, I left the record open to allow Applicant to submit additional relevant information. On August 12, 2009, I received his post-hearing submission, which is included in the record as Ax. C.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$31,694 in delinquent debt for an unpaid medical bill (\$960) placed for collection in March 2007 (SOR ¶ 1.a); for a past due second mortgage account (\$1,984) (SOR ¶ 1.b); for a delinquent credit card account (\$28,708) referred for collection (SOR ¶ 1.c); and an unpaid medical bill (\$42) for treatment received in March 2007 (SOR ¶ 1.d). Applicant denied SOR ¶¶ 1.a and 1.d, claiming both were paid or otherwise resolved. Ax. B supports his claim that SOR ¶ 1.a was being resolved through his medical insurance (see also Tr. 34 - 35, 79), and Department Counsel acknowledged that one of the credit reports in evidence (Gx. 2) showed the debt alleged at SOR ¶ 1.d has been paid. (Tr. 12, 79) Applicant denied SOR ¶¶ 1.b and 1.c on the basis that they are disputed debts. In addition to the facts established through the pleadings, I make the following findings of relevant fact.

Applicant is 59 years old and holds a bachelor,s degree in computer science. He was a self-employed software engineer with his own small information technology business from about June 1998 until June 2008, when his business, which had been struggling for most of the preceding two years, failed. At that time, he hired on with his current employer, a large defense contractor. (Answer; Gx. 1; Tr. 22) Applicant asserts he had excellent credit, and that his business was successful and provided him with a comfortable income until about 2006 or 2007. It was also around that time his mother became ill and required full-time care. Applicant's brother actually cared for their

² 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, the revised guidelines replace the guidelines contained in Enclosure 2 to the Directive.

³ Without objection, the document (identified in the transcript at p. 8) was included in the record with Applicant's response.

⁴ Identified in the transcript at pp.13 - 16.

⁵ Identified in the transcript at pp. 29 - 30.

mother, but Applicant provided substantial financial support. Unfortunately, when his business began to fail, Applicant found himself overextended financially. (Answer; Tr. 21 - 23)

At times, Applicant was able to make as much as \$30,000 in a single month from his business. Generally, he chose to put the money back into the business and send money to his brother for care of their mother. He usually sent him about \$7,000 each month. However, by the summer of 2007, the business would not support Applicant and allow him to help his mother to the same extent. The business is still active and provides him about \$1,000 each month in addition to the \$6,200 he nets each month from his current job. Since he started working for his current employer, Applicant estimates he has about \$4,000 remaining each month after expenses, including a \$300 monthly payment to his mother's care. (Answer; Tr. 37 - 39, 50, 70 - 71)

Applicant has lived in the same condominium since about 2000. He has two mortgages on that property. Around September 2007, he began having trouble paying his bills and, by May 2008, foreclosure proceedings had begun. Applicant was able to resolve the past due payments on his first mortgage, but, as alleged in SOR ¶ 1.b, he still owes at least \$1,984 for missed payments on his second mortgage, which has a balance of about \$72,000. (Gx. 3) At the hearing, it was determined that Applicant has not made any payments on the second mortgage since late 2007. (Tr. 59) He testified that he has been trying to resolve his second mortgage for more than a year, that he is disputing the actual amount he owes on that obligation, and that he has submitted documents several times as requested by the mortgage company, only to be repeatedly frustrated by the bank's procedures and non-responsiveness. (Answer; Tr. 23 - 26) Applicant further averred that he could provide post-hearing documentation of his claims, but provided only an incomplete letter from the creditor who now holds the account. (Ax. C) That letter and Applicant's forwarding letter provided no new support for Applicant's claimed dispute with this creditor.

In 2001, Applicant took a cash advance of \$45,000 against one of his credit cards. He used the money to buy a boat. Credit reports (Gx. 2 and Gx. 3) show that Applicant still owes about \$28,708 on this debt, as alleged in SOR ¶ 1.c. Applicant denies he is obligated to pay this debt. He insists that between 12 and 24 months after he took this advance, the credit card rates were increased from 10.9% to at least 25%. Applicant's position is that he no longer owes anything to the credit card company, because they violated the terms of their original agreement. When asked if the rates were increased because he had missed payments, he stated only that it was possible he may have missed one or two payments. (Answer; Tr. 29 - 32, 42 - 43, 66 - 68)

Applicant hired an attorney to help negotiate with the creditors in SOR ¶¶ 1.b and 1.c. He has had no success resolving either obligation through counsel. (Answer; Ax. A). However, in December 2008, Applicant was offered a chance to settle the SOR ¶ 1.c debt for \$4,000. Despite having a significant positive cash flow at the time, he did not act on the offer, choosing instead to ask the creditor to send his attorney a copy of a proposed agreement for legal review. (Tr. 30 - 32) Applicant has not otherwise acted on the debt and still questions whether he should have to pay even \$4,000 to resolve it.

(Tr. 73) Despite claiming at hearing that he can document his dispute with the SOR ¶ 1.c creditor, he made no post-hearing submission regarding that debt.

Policies

Each security clearance 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 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 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. 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

⁶ Directive. 6.3.

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

⁸ See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁹

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.

Available information shows the debts alleged in SOR ¶¶ 1.a and 1.d have been paid or otherwise resolved. However, Applicant denied that he owes the debts alleged in SOR ¶¶ 1.b and 1.c, which total about \$30,692. Accordingly, the burden remained with the government to prove those allegations.¹⁰ The record evidence (the government's exhibits and Applicant's testimony at the hearing) is sufficient to show that Applicant still owes those debts. Also, it was learned at hearing that the Applicant has not made any payments on his second mortgage, which has a balance of at least \$72,000, since the last quarter of 2007. This makes it likely that the SOR ¶ 1.b debt is actually larger than alleged. Both debts have been delinquent since at least September 2007, and there is no record of payment or other action to resolve either debt. The foregoing 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*).

The government proved the controverted facts alleged in SOR ¶¶ 1.b and 1.c, and those facts raise security concerns under Guideline F. As a result, the burden shifted to the Applicant to present information sufficient to refute the allegations, or to mitigate the security concerns raised.¹¹ Because Applicant's debts remain unpaid, his financial problems must be viewed as recent. While it may be that the circumstances leading to his problems are not likely to recur, because, as discussed below, his response to his financial problems has been insufficient, questions remain about his judgment. Thus, available information precludes application of the mitigating condition 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*).

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

¹⁰ Directive, E3.1.14.

¹¹ Directive, E3.1.15.

There is no record of financial counseling or other outside assistance, and he has not shown that he has made any payments on either debt. Thus, the mitigating conditions at 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*) do not apply.

It is not controverted that Applicant's financial problems resulted, in part, from the failure of his business and from the need to support his ailing mother. These facts require consideration of the mitigating condition 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*). However, this adjudicative factor can apply only if Applicant acted responsibly under the circumstances. I conclude he has not done so. As to SOR ¶ 1.b, a debt for missed payments totaling less than \$2,000, he has had the means to pay this off since late 2008. Also bearing on this issue is the fact that, in 2007, he stopped paying anything to the second mortgage, likely exacerbating his financial problems to an extent not identified through his background investigation. As to SOR ¶ 1.c, Applicant testified that he was offered a chance to settle a \$28,000 debt for \$4,000 in December 2004. His refusal to take advantage of that offer was ill-advised, to say the least.

Applicant's denial of both SOR ¶¶ 1.b and 1.c was also based on his claimed disputes with both creditors. His response requires consideration of the mitigating condition at AG ¶ 20(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*). I conclude this does not apply. Applicant was provided extra time after the hearing to present documents to support his claims, yet the documentation presented in his post-hearing submission (Ax. C) has no persuasive value in the face of the government's information. On balance, I conclude Applicant has failed to mitigate the security concerns raised 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 59 years old, and was a successful businessman for nearly 10 years. However, despite the fact his financial problems since 2007 were due to circumstances beyond his control, there is insufficient positive information about Applicant's judgment to overcome the adverse inferences to be drawn from his inadequate response to his financial problems. His explanations for his inaction were not plausible, and available information shows that his financial difficulties are unlikely to change in the near future. These facts and circumstances present an unacceptable risk were he to be granted access to classified information. A fair and commonsense assessment¹² of all available information about

¹² See footnote 6, *supra*.

the Applicant's background shows there are still doubts about his ability or willingness to protect the government's interests as his own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved for the government.¹³

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

¹³ See footnote 9, *supra*.