



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-01736
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

April 29, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is granted.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) on November 11, 2008. 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.

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

On October 20, 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 Adjudicative Guidelines (AG).² Applicant signed his notarized Answer on November 10, 2009.³ He admitted all allegations in the SOR. He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 1, 2010, and the case was assigned to me on the following day. DOHA issued a Notice of Hearing on February 17, 2010, and I convened the hearing as scheduled on March 4, 2010.

During the hearing, the government offered eight exhibits, which I admitted as Government Exhibits (GE) 1 through 8. Applicant testified and offered four exhibits, admitted as Applicant's Exhibits (AE) A through D. I held the record open to allow Applicant to submit additional documentation. He timely filed two documents, which I admitted as AE E and F. DOHA received the transcript (Tr.) on March 12, 2010.

Findings of Fact

Applicant's admissions to SOR allegations 1.a. through 1.f. are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 40 years old, served in the National Guard from 1994 until 2000. He held a security clearance without incident during that time. He is married and has five children. They range in age from 3 to 25 years old, and they live with Applicant and his wife. Applicant also supports two grandchildren and a nephew. He attended college from 2003 to 2005, majoring in applied information technology. However, he did not complete a degree because of lack of funds. He works in the information technology field for a defense contractor. (GE 2; Tr. 19-23, 59)

Applicant's wife handled the family's finances, and before 2005, their financial situation was stable. (Tr. 39, 50) In about 2005, she started a small cleaning company. Applicant's oldest son also worked in the business. Initially, it did well and she had contracts to clean six office buildings. However, the business struggled during 2006 and 2007, and their debts started to become delinquent. It finally failed in 2008. (Tr. 41, 56) The collapse ruined the family's financial footing. They used credit cards to pay their living expenses. They were unable to keep up with their mortgage payments, and were

² Adjudication of this case is controlled by the Adjudicative Guidelines (AG) that were implemented by the Department of Defense on September 1, 2006. The AG 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.

³ Applicant's Answer included five documents identified herein as Answer Documents (AD) 1—creditor letter re allegation 1.d.; AD 2—creditor letter re allegation 1.c.; AD 3—creditor letter re allegation 1.f.; AD 4—creditor letter re unalleged debt; AD 5—Applicant's credit bureau report dated November 9, 2009.

forced to sell their home in about 2006 or it would likely have been foreclosed. The financial situation put their marriage under great stress, and they almost divorced. Applicant testified that he will not be in a similar situation in the future because,

I can't go through it again. I told my wife, I spoke to her. I just can't do it. It was the worst two years of my life. I get my house taken and I've got five kids. And we had to move into a small house. Everything got taken from me because of the situation, and I just can't take it.

Applicant's wife turned over the family finances to Applicant. He sought advice from his mother, a billing manager who is familiar with working with creditors. He also created a written budget, which he currently follows. (Tr. 28, 41-43, 50-51)

Starting in 2006, Applicant supported his wife's grandparents, and carried the \$687 monthly payments on the grandparents' house. He supported them until 2008, when the grandfather passed away. At times, the grandparents lived with Applicant's family. His wife's grandmother is currently in a nursing home, and Applicant no longer supports her. Applicant also cares for children through a foster-care program. Three of their five children are adoptees from foster care. (AE D; Tr. 27-29, 50)

Applicant's annual income between 2006 and 2007 was \$77,000. He was unemployed for approximately two months in 2007. He then obtained a contract that paid \$50 per hour, or approximately \$95,000 per year. However, he worked under that contract for six only months, until March 2008 when he joined his current employer. (GE 1; Tr. 29-30) His net monthly income in June 2009 was \$9,000, which included his income and foster-care payments of \$2,400 per month. (Tr. 24) His monthly expenses were \$8,230, and debt payments were \$240, leaving a net monthly remainder of \$530. His wife is not employed outside the home. Applicant and his wife each have a car, and they have a van that his son used in the business. The monthly car payments total \$1,900. One car loan, with a monthly payment of \$562, will be paid off in July 2010 (Tr. 43-45) He is also transferring his daughter from private school to public school, which will eliminate a monthly payment of \$893. (Tr. 45) Applicant is planning to move in May 2010. As a result, his utility bill of \$1,100 per month will drop to \$700. Applicant currently has one credit card with a balance of \$138. He testified that he paid the debts without seeking bankruptcy protection. (GE 4; Tr. 14, 30, 34, 46-49)

The SOR debts total approximately \$27,600, excluding duplicate allegation 1.e. The status of Applicant's SOR debts follows. The government's evidence supporting these debts appears in GE 6, 7 and 8, unless otherwise noted.

Allegation 1.a. – credit card, \$13,000 – PAYING. Applicant used the card for living expenses, including the support of his wife's grandparents, and to purchase machinery for his wife's business. He negotiated a settlement of \$6,000 with the creditor. He has paid \$1,000, and will use his 2009 tax refund to pay the additional \$5,000. (AE B, C; Tr. 27-29)

Allegation 1.b. – student loan, \$5,574 – PAYING. Applicant was paying \$100 per month, until he could no longer afford the payments. Approximately 15 months ago, he restarted the payment plan, and he has been paying \$76 per month since then. After he successfully paid for 11 consecutive months, the account was transferred to the current creditor. (AE A; Tr. 32-34)

Allegation 1.c. – credit card, \$2,924 – PAID. Applicant used this credit card for his wife’s business and family living expenses. He provided documentation showing that he settled the account for \$662, and it is paid in full. (Answer Document (AD) 2; Tr. 35-36)

Allegation 1.d. – student loan, \$5,943 – PAID. In October 2009, Applicant arranged for a settlement on this account of \$2,000. He provided documentation showing that he has paid the balance. (AD 1; AE E; Tr. 36-38)

Allegation 1.e. – credit card – DUPLICATE. Applicant provided documentation from the creditor showing that this account was transferred to the creditor in allegation 1.a. (AE C; Tr. 38-39)

Allegation 1.f. – overdrawn account - \$132 – PAID. Applicant paid this debt in full, and provided supporting documentation dated November 2009. (AD 3)

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 AG.⁴ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

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 Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or

⁴ Directive. 6.3.

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

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.⁶ 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 requisite judgment, reliability and trustworthiness of one who will 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.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern pertaining to 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 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.

Applicant had good credit until 2005. However, his wife started a cleaning business, which failed in 2008-2009. He used credit cards to finance her business and to pay living expenses. Disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. The record contains no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains conditions that can mitigate security concerns. In this case, the following conditions are relevant:

⁶ See *Egan*, 484 U.S. at 528, 531.

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

(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; and

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

Applicant's delinquencies, which began in 2008, are recent, as they remained delinquent until a short time ago. However, his delinquencies resulted from the failure of his wife's business, which is now defunct. Because of the family crisis resulting from the failure, Applicant is unlikely to allow such a situation to recur. Applicant has paid four of the six debts, and has an active payment plan in place for the remaining two, which reflects favorably on his current reliability and good judgment. AG ¶ 20(a) applies. Although he did not attend formal counselling, he sought the advice of his mother, a billing manager. He also developed a written budget, which he continues to follow. He has provided documentation supporting his payment claims. His financial problems are under control, and AG ¶ 20(c) and (d) also apply.

Applicant had good credit before the business venture. The business initially did well, and Applicant had no way to foresee its failure. Moreover, he made diligent efforts to pay his accounts as soon as he was reasonably able to do so, and he did not spend money in a negligent or frivolous manner. Applicant's situation and his response support application of AG ¶ 20(b).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at 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 upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has had significant expenses over the past several years. He has supported five children through foster care, and adopted three of them. He also supported two nephews and his wife's grandparents. His wife paid the family bills, and they were able to maintain good credit. Initially, when his wife started a cleaning business, it succeeded. However, when it began to fail, and brought on a crisis in the family. Ultimately, they lost their home. Over the past year-and-a-half, Applicant has taken numerous steps to recover: he took over the family bills; will complete payments on one car loan shortly; is moving to a less expensive house; and is moving one child to a public school. His actions allowed him to negotiate settlements with creditors, pay off four of the six SOR debts, and maintain a payment plan on the other two debts. Applicant has made significant improvements in his financial situation in the past 18 months. Applicant was also candid and forthright about his financial problems.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a. – 1.f.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge