



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



In the matter of:)
)
) ISCR Case No. 09-01939
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel

For Applicant: *Pro se*

February 22, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, 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.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on September 25, 2008, to request a security clearance required as part of his employment with a defense contractor (Item 4). 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, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On September 17, 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).

Applicant received the SOR on September 25, 2009. He signed a notarized Answer on October 6, 2009, and requested a decision without a hearing. In his Answer, Applicant admitted all allegations in the SOR, except allegation 1.d. and 1.e. He also admitted allegation 1.j., with explanation. On November 24, 2009, DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision to deny Applicant's request to be granted a security clearance. The FORM contained nine documents, identified as Items 1 through 9. The FORM and attached Items were forwarded on November 30, 2009, and received by Applicant on December 10, 2009. He was given 30 days from the date he received the FORM to respond. He did not submit a response. The case was assigned to me on February 4, 2010, for an administrative decision based on the written record.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, the FORM, and Applicant's response to the SOR, I make the following additional factual findings.

Applicant is 59 years old. He has been self-employed since 1985. In 2008, he began working on a part-time basis for a federal contractor as a graphic designer. As of May 2009, he worked from 20 to 40 hours per week. Since 2004, he has operated a drug and alcohol recovery center, which currently is located in his residence. (Items 4, 5)

Applicant married for the first time when he was 19 years old. He divorced his first wife approximately three years later. He married again in 1988 and divorced in 2002. In 2005, Applicant married his third wife. He has three children aged 2, 4, and 22 years. He and his wife separated in 2008. They share joint custody of the children. (Items 4, 5)

The SOR alleges the following 10 debts, which total \$226,000 (Items 7, 8, 9).

Tax Liens:

State tax lien of \$23,062 (allegation 1.a.);

Federal lien of \$100,000 (allegation 1.j.)

Without noting which lien he was referring to, Applicant stated that he filed an extension in 2008, but could not afford to continue with the process (Item 6). He admits poor money management, resulting in his failure to keep up with his tax

filings. The theft of \$60,000 from his business made it difficult to pay his taxes. He made some payments to the IRS, but as of January 2009, he had not made any payments within the previous year. He intended at that time to have an accountant file federal and state tax returns in July 2009. In his October 2009 Answer to the SOR, he did not state whether he had filed the tax returns, and stated that he is not making payments. (Items 3, 5, 6)

Telecommunications: one debt totaling \$69,430 (allegation 1.b. [judgment]) The debt is for advertising Applicant's business. As of November 2008, Applicant planned to continue making payments until he is able to negotiate a settlement amount. However, In October 2009, Applicant stated that the settlement amount the creditor demanded was not possible because he does not have the funds. (Items 3, 5, 6)

Credit card: \$4,205 (allegation 1.c.) Applicant's original plan was to pay this debt with equity from his house when the real estate market improves. The creditor has offered settlements in the past, but Applicant did not have the funds to pay the amount offered. (Items 5, 6)

Unidentified creditor: \$29 (allegation 1.i.) Applicant will pay the debt, and stated that he might already have done so. (Item 3)

Utilities: \$248 (allegations 1.e.) Applicant does not recognize this debt and denies having service from this company. (Item 6)

Vending company: \$28,617 (allegation 1.f.) This debt relates to a lease Applicant signed while running his business. He negotiated with the creditor, but did not have the funds to pay the debt because of the failure of his business. The creditor filed suit in April 2009, in an effort to seize various assets. Applicant states that the judge did not allow seizure of the assets. As to the debt, he notes that "some day I will pay it." (Items 3, 5, 6)

Medical:

\$105 – unknown medical provider (allegation 1.d.) – In his interrogatory response, Applicant was unsure of the creditor for this debt. However, in his Answer, he denied the debt, because he stated that he "paid it off; I have not cleaned it up yet." He provided no documentation to support this claim. (Item 6)

\$164 – medical center (allegation 1.g.) - Applicant admits to owing this debt and intends to pay it. (Item 3)

\$2,417 – unknown medical provider (allegation 1.h. [judgment]) - Applicant does not recognize this debt. If it is valid, he intends to pay it. (Item 3)

In response to the FORM, Applicant failed to provide documentation to support his statement that he paid allegation 1.d., that he has “paid them several times over” as to allegation 1.c., or that he “probably” already has paid the \$29 debt at allegation 1.i. He stated that he would pay the remaining debts when he could.²

Applicant submitted a personal financial statement indicating a net monthly income of \$1,200, and additional income of \$10,000 from the recovery center he operates, for a total of \$11,200. He listed monthly expenses of \$9,900 and debt payments of \$6,900, for a total monthly outlay of \$16,800. These figures result in a negative monthly net remainder of \$5,600. Applicant did not include payments of SOR debts on this expense sheet. (Item 6)

For 25 years, Applicant operated his own business. In about 2003, he hired an accountant who stole more than \$60,000. In addition, Applicant billed approximately \$200,000 per year with a large defense contractor. The contractor’s account manager, who had referred jobs to Applicant, left that company, and thereafter Applicant no longer received assignments from the contractor client. He did not indicate when this event occurred. However, these two events severely damaged his business, and he has been struggling financially since that time. (Items 3, 5)

In 2006, Applicant adjusted to these changes by moving to an area with a lower cost of living. He purchased a foreclosed home, intending to repair it and later use the equity to pay debts and improve his credit. The house value has increased from the purchase price of \$850,000 to an appraised value of \$1.25 million in January 2009. He also uses his residence as an alcohol and drug addiction recovery center, which improved his cash flow. Applicant believes that he is in a solid financial position and stated, “My credit is depleted, but the equity I need to pay off my debts is here in my home. My plan worked and I will make people whole some day when I can.” He also stated, “I will pay my debts and will have a prudent reserve some day as a result of investing in my home. The equity is there, stuck for now, but is existent.” (Items 3, 5)

Applicant has also had family difficulties in the past several years. He supported his terminally ill sister for the last two years of her life. Her care prevented him from maintaining his usual income level from his business. He also spent time and resources helping his brother, who died about the same time as his sister. (Item 3)

Applicant did not state whether he has participated in financial counseling. He noted in his Answer that he chose not to pursue bankruptcy, which is a legitimate path that an applicant can consider to resolve overwhelming debt. Other than his own statements, he did not provide character references, performance evaluations, or other documents on which to base an assessment of his character. As Applicant chose to have his case decided on the basis of the written record, it is difficult to assess his credibility.

² As of May 2009, Applicant also owed approximately \$4,000 in loans from three friends. These debts are not alleged in the SOR.

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 Revised Adjudicative Guidelines (AG).³ Decisions must also reflect 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 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 whether it is clearly consistent with the national interest⁴ 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.⁵ 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.⁶

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

The record evidence shows that Applicant's unpaid debts of approximately \$226,000 remain unpaid. In addition, he failed to file state and federal tax returns and tax liens have been placed against him. The federal lien alone amounts to \$100,000. Applicant's history of failing to meet his financial obligations supports application of disqualifying conditions AG ¶19 (a) (inability or unwillingness to satisfy debts), AG ¶19 (c) (a history of not meeting financial obligations) and AG ¶ 19(g) (failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same) apply.

Under AG ¶ 20, the following potentially mitigating conditions 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

As of the date the SOR was issued, Applicant had more than \$200,000 in delinquent debt. His financial problems are not in the distant past, because these debts remain unpaid. He intends to use his home equity to pay his debts, but has no immediate plan to access that equity. Moreover, with his large negative monthly remainder, it cannot be predicted when his situation will be resolved, or that new delinquencies will not occur in the future. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) is relevant because Applicant's business suffered two events that severely damaged it: the theft of assets by an accountant, and the loss of business from Applicant's largest client. These were events that he could not have predicted. However, without knowing the dates of these events, it is difficult to determine when they occurred in relation to when his debts became delinquent. Applicant earns a limited income from part-time employment. It appears from his personal financial statement that he does not earn substantial income from the residential center. Applicant's limited income contributes to the difficulty in bringing his debts under control. Applicant's relocation, his home purchase, and the increase in the house's value are positive signs. However, his long-range plan to use the equity in his home to pay down his debts is a future plan, which may or may not be realized. He has taken no other steps toward resolving his debt. Only partial mitigation is available under AG ¶ 20(b).

It does not appear from the record that Applicant received financial counseling to assist him in developing a budget, establishing payment plans, or resolving his debts. AG ¶ 20(c) cannot be applied.

Applicant has provided no documentation supporting his statement that he made some payments on the telecommunications debt. He has no payment plans in place. There is no evidence indicating that Applicant's debts are in the process of being resolved. There is no evidence that he has attempted to tap into his current equity by obtaining a home equity loan. The Appeal Board defines "good-faith" as acting in a way that shows reasonableness, prudence, honesty and adherence to duty or obligation.⁷ Promises to act in the future are insufficient to constitute good-faith efforts. Although an applicant is not required to have paid every debt, he or she must show a reasonable plan for repayment and actions to support the plan. Although Applicant plans to some day use his equity to pay his debts, he gives no indication of when that will be, and has taken no steps to implement the plan. AG ¶ 20(d) does not apply. Overall, the partial mitigation available under AG ¶ 20(b) is insufficient to outweigh the fact that Applicant carries a very large debt load and has taken no steps to resolve it. I find against the Applicant on Guideline F.

Whole Person Concept

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. 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

⁷ ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

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.

Applicant is 59 years old. His income decreased when his business suffered substantial losses from theft by an employee and the departure of his major client. These factors, as well as his admitted mismanagement of his finances, contributed to the significant debt load of more than \$200,000 that he accrued over the past several years. Although he states that he will some day pay his creditors with the equity in his home, there is no evidence of a concrete plan to do so, nor any steps taken in that direction. Applicant's failure to file tax returns and pay his legitimate tax obligations also raises concerns about his trustworthiness and reliability.

For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline. 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 by his substantial indebtedness. Such doubts must be resolved in favor of 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 as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a. – 1.j.	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