



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 09-02302
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)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: *Pro Se*

August 5, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's request for eligibility for a security clearance is denied.

On December 3, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor, where he works as an armed security officer. After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a set of interrogatories¹ regarding information in his background. Based on the results of the background investigation and his response to the interrogatories, DOHA adjudicators were unable to make a

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's access to classified information. On May 15, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the revised Adjudicative Guidelines (AG)³ under Guideline F (financial considerations) and Guideline E (personal conduct).

On June 2, 2009, Applicant responded to the SOR and requested a decision without a hearing. On June 15, 2009, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the government's preliminary decision. Applicant received the FORM on June 26, 2009, and timely responded to the FORM in a two-page handwritten letter dated June 26, 2009. The case was assigned to me on July 17, 2009.

Findings of Fact

The government alleged Applicant owed approximately \$16,283 for 17 delinquent debts listed in SOR ¶¶ 1.a - 1.q. In response to the SOR, Applicant admitted without explanation all of these allegations. The government also alleged in SOR ¶ 2.a that Applicant deliberately made a false statement to the government when he answered "no" to e-QIP questions 28.a (debts more than 180 days past due in the past seven years) and 28.b (currently more than 90 days past due on any financial obligation). He denied intentionally falsifying his e-QIP. In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 46-year-old high school graduate. Since August 2008, he has worked as an armed security guard for a defense contractor. Between 2000 and 2008, he held a variety of jobs, including other security guard positions. This appears to be his first application for a security clearance. (FORM, Item 4)

Applicant has never been married, but has four children of his own (ages 10, 8, 8, and 5). He also lives with his girlfriend and her 7-year-old child. (FORM, Item 4) When Applicant submitted his e-QIP, he answered "no" to all of the questions pertaining to his finances (debts, bankruptcy, garnishments, etc.) However, a credit report obtained during his background investigation showed he was delinquent or seriously past due on numerous debts totaling in excess of \$16,000. Two of the unpaid debts (SOR ¶¶ 1.k and 1.l) are for past due child support and total \$7,908. Of the remaining debts, seven (SOR ¶¶ 1.a, 1.b, 1.d - 1.h) are for unpaid medical accounts totaling in excess of \$4,000. The remaining debts are for unpaid personal credit accounts,

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 supersede the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the government's case.

including one delinquent credit card and several unpaid cell phone, cable television, and internet service accounts. (FORM, Items 6 and 7) The debts documented in the FORM became delinquent as far back as October 2003 and as recently as December 2008. (FORM, Items 6 and 7) All but two of the debts listed in the SOR have been placed for collection.

On April 21, 2009, Applicant responded to interrogatories from DOHA adjudicators. The questions therein sought additional information about the debts contained in his credit reports. The interrogatories also asked Applicant to provide a personal financial statement (PFS) listing his monthly income and expenses. His PFS showed that his monthly expenses, which did not include any payments to any of the debts listed in the SOR, exceeded his monthly income by about \$390. (FORM, Item 5)

Applicant claimed that he did not intentionally omit his debts from his e-QIP. In response to the SOR, he asserted that he “answered no because [he] did not know what was on [his] credit report.” (FORM, Item 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 revised Adjudicative Guidelines (AG).⁵ 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 factor 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 concern and adjudicative factors under AG ¶ 15 (Guideline E - personal conduct) and AG ¶ 18 (Guideline F - financial considerations).

⁵ Directive. 6.3.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁶ 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.⁷ 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 interest 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 in favor of the government.⁸

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.

The government presented sufficient information to support the allegations in the SOR ¶¶ 1.a - 1.q. Further, Applicant admitted each of the alleged debts, which total more than \$16,000. Applicant's indebtedness spans at least the past six years, and it appears from the negative monthly cashflow reflected in his PFS that he does not have the means to pay any of his debts. Available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), AG ¶ 19(c) (*a history of not meeting financial obligations*), and AG ¶ 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*).

In response, Applicant has not shown that he is attempting to pay or resolve his debts. He has not explained how he came to experience his financial problems, and he has not demonstrated that he has done anything, such as obtain financial counseling or

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

other professional guidance, to improve his financial standing. Finally, he has not indicated that he is disputing any of debts attributable to him in the government's information. Accordingly, none of the mitigating conditions listed at AG ¶ 20 apply and Applicant has failed to mitigate the security concerns established by the government's information about his finances.

Personal Conduct.

The government also alleged that Applicant deliberately made false statements to the government by withholding adverse information about his finances when he answered "no" to e-QIP questions 28.a and 28.b. If proven, this allegation raises a security concern about Applicant's personal conduct expressed at AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Because Applicant denied this allegation, Department Counsel was required to present "evidence to establish facts alleged in the SOR that have been controverted." (Directive, E3.1.14) Here, the evidence is largely circumstantial – Applicant did not list any of his delinquencies in his e-QIP, but the government's credit reports show he has owed numerous debts for more than 90 or 180 days. I conclude that all of the information, circumstantial or not, bearing on the issue of Applicant's intent shows he tried to hide his financial problems when he submitted his e-QIP. Even if he did not know all of the information about his debts, it defies common sense for Applicant to claim that he did not know he was delinquent on some of his obligations within the meaning of both e-QIP questions. At the very least, a state child support agency was seeking resolution of his unpaid support obligations, and all but two of his other creditors were collection agencies with whom it is reasonable to infer that Applicant has had some contact. At the very least, a "yes" answer to either question would have put the government on notice of Applicant's financial problems.

Based on the foregoing, this record requires application of the disqualifying condition at AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). In response to the SOR and the FORM, Applicant has presented no information that would support any of the AG ¶ 17 mitigating conditions. Nor has given the government any reason to conclude that his trustworthiness and candor would not be suspect should he be given a security clearance. Accordingly, I conclude that Applicant has failed to mitigate the security concerns about his personal conduct.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 47 years old and presumed to be a mature adult. However, the weight of the information presented shows he has failed to meet his financial obligations over the past several years, and that he was untruthful about those obligations in his application for clearance. There is no information in this record about any other facet of his background that sufficiently counters the adverse information underlying the security concerns about his finances. A fair and commonsense assessment⁹ of all available information bearing on Applicant's finances shows he has failed to address satisfactorily the government's doubts about his suitability for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.¹⁰

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
Subparagraphs 1.a - 1.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

⁹ See footnote 5, *supra*.

¹⁰ See footnote 8, *supra*.