



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-03514
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Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro se*

June 21, 2010

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 granted.

On June 17, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to continue a security clearance required for his job with a defense contractor. After reviewing the results of Applicant’s background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent interrogatories to Applicant to clarify or augment information in his background.¹ After reviewing the results of the background investigation and Applicant’s responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

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

finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On July 23, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)³ under Guideline F (financial considerations).

Applicant responded to the SOR through an undated notarized statement and requested a decision without a hearing. On October 20, 2009, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the Government's preliminary decision. Applicant received the FORM on March 19, 2010,⁵ and was given 30 days to file a response to the FORM. On April 10, 2010, Applicant submitted an 11-page response to the FORM. Department Counsel waived objection to the admission of Applicant's responsive submission. The case was assigned to me on June 7, 2010.

Findings of Fact

The Government alleged that Applicant owes approximately \$19,838 for seven delinquent or past-due debts (SOR ¶¶ 1.a - 1.g). Applicant admitted the allegations at SOR 1.a - 1.f, but indicated he had no knowledge of the debt alleged at SOR 1.g. Applicant's response to SOR 1.g is entered as a denial. (FORM Item 3) In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 50-year-old registered nurse, and he is currently employed by a defense contractor in a job that requires him to have a security clearance. Between October 2003 and November 2004, and between January 2006 and at least June 2008, he resided at various locations in Iraq as part of his employment as a defense contractor in support of military operations there. (FORM, Item 4)

Applicant and his wife have been married since February 1989. A previous marriage lasted from July 1980 until May 1985, when he and his ex-wife (now deceased) divorced. Applicant has one child, age 9. (FORM, Item 4)

Applicant served on active duty in the U.S. Army from December 1987 until January 1995. He served in the Colorado National Guard from January 1995 until June 1995, when he joined the Army Reserve and served until June 2000. He has held a security clearance since January 1992. (FORM, Item 4)

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

⁵ According to the administrative file in this case, after he responded to the SOR, Applicant left the job he held at the time the SOR was issued. The FORM was re-sent to him at his current place of employment on March 2, 2010.

In response to e-QIP questions about his finances, Applicant disclosed that he had three delinquent Capitol One credit card accounts. Subsequent credit reports obtained during his background investigation showed that he owed the debts alleged in the SOR. (FORM, Items 6 and 7)

In April 2009, when Applicant was interviewed as part of his background investigation, he acknowledged the accuracy of the credit report the investigating agent presented to him. He further explained that his financial problems began when his wife experienced pre-natal complications when she was pregnant with their child, who was born in December 2000. She was hospitalized during the last three weeks of the pregnancy, and their child was hospitalized for three weeks in intensive care. A contract on which Applicant was working, and through which he obtained medical insurance, expired at the end of 2000. He was unemployed for two months after the child was born, but he had continuing medical coverage for which he had to pay \$1,200 each month. (FORM, Item 5)

Applicant found work in February 2000, but at a much lower wage than he earned before his child was born. Applicant was in training to become a nurse, but had not yet completed his certifications. When he found work in February 2001, he was able to earn an annual income of about \$34,000 through a combination of nursing assistant and other medical jobs. He and his wife relied on his income as their sole means of support. As a result, he and his wife had to rely on credit cards to make ends meet. His continuing medical coverage after he left his job cost him \$1,200 each month. Applicant tried in vain to work with his creditors to make payments based on what he could afford. The accounts were all eventually written off or referred to collection companies. (FORM, Item 5)

In 2006, Applicant began earning a higher salary that enabled him to start repaying his delinquent debts. However, when he contacted the collection companies holding the accounts, they demanded amounts far in excess of what he originally owed. When it became apparent that the creditors would not work with him to resolve his debts, he stopped contacting them. As of the subject interview in April 2009, Applicant's net salary each month was about \$18,000. After all of his expenses, Applicant and his wife had about \$12,000 remaining each month with about \$60,000 in savings. (FORM, Item 5)

In his response to the FORM, Applicant stated that his financial status is now "much different than it was two years ago when [his background investigation] began." In support of his statement, he presented a credit report dated April 7, 2010, that showed he had no delinquent accounts. It also showed that he had paid the debt alleged at SOR ¶ 1.a.

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 adjudicative

guidelines.⁶ 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 concern and adjudicative factors 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 compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the national interest.⁹

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.

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

Analysis

Financial Considerations

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The information in the FORM, along with Applicant's unqualified admissions, supports the allegations in SOR ¶¶ 1.a - 1.g. Two credit reports (FORM, Items 6 and 7), obtained during Applicant's background investigation by the Office of Personnel Management, the agency which conducts industrial background investigations for DoD, document the debts alleged in the SOR.¹⁰ Further, available information shows his debts became delinquent as far back as April 2002. These facts require application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

By contrast, available information shows that Applicant's financial problems began in late 2000 and early 2001, when his wife was hospitalized for three weeks before their child was born, and when their child was hospitalized for three weeks due to delivery complications. Combined with a loss of employment, subsequently finding work that paid less than Applicant had previously earned, and having to pay for continuing health care for two months, Applicant and his wife relied on personal credit that they were unable to repay. 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*). While the medical problems of his wife and child, and the loss of his job and reduced income constitute uncontrollable events, for AG ¶ 20(b) to be applicable, it must be shown that Applicant *acted responsibly under the circumstances*. The Government's information shows that Applicant tried to work out repayments that he could afford, and that in 2006 he revisited his obligations with the

¹⁰ Two additional credit reports were also submitted. FORM, Item 8, was obtained by a DOHA adjudicator on July 13, 2009. FORM, Item 9, was obtained on October 20, 2009, by Department Counsel representing the Government in this case. Applicant made no objection to the admission of either exhibit. However, Applicant likely was unable to discern the difference between the source of these two exhibits and the other credit reports (FORM, Items 6 and 7), which were "furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Department or Agency head concerned, to safeguard classified information within industry under [Executive Order] 10865" (Directive E3.1.20). Because Department Counsel has not provided a basis for the authenticity of either document, given the requirements of Directive E3.1.20, and because Applicant did not make an informed waiver of objection to the admissibility of FORM Items 8 and 9, I have not considered either document in reaching my decision.

collection companies holding his accounts. Even though he was unsuccessful, Applicant did not seek to avoid his responsibilities in this regard.

Further, Applicant's current finances, as captured in his subject interview, along with a recent credit report suggest that he is financially solvent and may have repaid or otherwise resolved all of the listed debts. AG ¶ 20(b) applies. For the same reasons, the mitigating conditions 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*) and 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*) also apply. On balance, all of the available information bearing on the cause of Applicant's debts and his current circumstances is sufficient to mitigate the security concerns about the debts alleged in the SOR.

Whole-Person

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, a 50-year-old defense contractor, served in the Army and Army Reserve for about 13 years. He is presumed to be a mature, responsible adult. His financial problems arose through circumstances not likely to recur. His personal finances are characterized by the absence of new debt, significant personal savings, and a positive monthly cashflow, all of which indicate sound judgment, and that it is unlikely he will compromise sensitive information for financial gain. A fair and commonsense assessment of this record shows the security concerns about Applicant's past delinquencies have been mitigated.

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: FOR APPLICANT

Subparagraphs 1.a - 1.g: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant Applicant's request for a security clearance. Eligibility for access to classified information is granted.

MATTHEW E. MALONE
Administrative Judge