



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-03555
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Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

April 27, 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 denied.

On January 30, 2009, 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 Applicant’s background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent two sets of 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

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

affirmative finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On October 5, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline (AG)³ for financial considerations (Guideline F).

On October 28, 2009, Applicant responded to the SOR and requested a decision without a hearing. On February 23, 2010, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the Government's preliminary decision. Applicant received the FORM on March 5, 2010, and was given 30 days to file a response to the FORM. Applicant did not submit a response before the deadline, and the case was assigned to me on April 23, 2010.

Findings of Fact

The Government alleged that Applicant owes about \$24,444 for 16 delinquent debts that, as of the date of the SOR, had not been paid or otherwise resolved (SOR ¶¶ 1.a - 1.p). Applicant admitted without explanation all of the allegations. (FORM, Items 1 and 3) In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is 24 years old and has been employed since February 2007 by a defense contractor in a job that requires him to have a security clearance. He and his wife were married in July 2006, but have been separated since January 2008. He has two children, ages 2 and 4. (FORM, Item 4)

When Applicant submitted his e-QIP, he disclosed that his wages were being garnished to satisfy a child support obligation, and that he owed other debts that were 90 or 180 days delinquent. A credit report obtained during Applicant's background investigation documented the debts alleged in the SOR. (FORM, Item 6) When Applicant responded to DOHA financial interrogatories on July 10, 2009, he submitted a personal financial statement (PFS) that showed he has about \$464 remaining each month after expenses. However, those expenses did not include repayment of any of his past-due debts. He also acknowledged that he has not made paid or otherwise resolved any of his debts. (FORM, Item 5)

On March 26, 2009, Applicant was interviewed by a government investigator as part of his background investigation. During the interview, he was asked about the delinquent debts in his credit report. Applicant confirmed many of the delinquent debts, but he also explained that some of them may be the result of identification theft after his

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 adjudicative guidelines, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, these guidelines take precedence over the guidelines provided in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

car was broken into. He also explained that his financial problems began when his wife filed for child support assistance through a state agency after they separated in 2008. Applicant has not received any financial counseling or other professional assistance to resolve his debts. (FORM, Item 5)

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.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 ¶ 18 (Guideline F - financial considerations).

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

⁵ Directive. 6.3.

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

⁷ See *Egan*, 484 U.S. at 528, 531.

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.⁸

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.p. Available information shows these debts remain unpaid and 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*).

In response, Applicant did not timely provide any information that would mitigate or extenuate the adverse security implications of the Government’s information. The fact that most of his debts became delinquent after he and his wife separated in early 2008 requires 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, without information showing that he has acted to resolve his debts or improve his finances, I cannot conclude that he has “acted responsibly under the circumstances.” Applicant has not established that he has paid or is paying his debts, despite the fact that he has a significant positive monthly cash flow that would allow him to begin paying at least some of his debts. Further, he is not receiving any financial advice or debt counseling to improve the way he manages his finances. Accordingly, none of the mitigating conditions listed at AG ¶ 20 apply, and the security concerns about Applicant’s finances remain unchanged.

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 24-year-old employee of a defense contractor, is presumed to be a mature, responsible adult.

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

However, he has not presented anything about his work performance or any other facet of his character that reflects positively on his suitability for access to classified information. A fair and commonsense assessment⁹ of all available information creates doubts about Applicant's suitability to hold a clearance that his response has not adequately addressed. 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.p: 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*.