



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-03794
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Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

May 17, 2010

Decision

MALONE, Matthew E., Administrative Judge:

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

On January 29, 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 the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant two sets of interrogatories¹ to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly

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

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

consistent with the national interest to grant Applicant's request for access to classified information. On October 23, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise disqualifying security concerns addressed in the adjudicative guidelines (AG)³ for financial considerations (Guideline F).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on December 18, 2009. Pursuant to a Notice of Hearing issued on December 30, 2009, I convened a hearing in this matter on January 21, 2010. The parties appeared as scheduled. The Government presented five exhibits (Gx. 1 - 5), which were admitted without objection. Applicant testified on his own behalf and proffered two exhibits (Ax. A and B), which were admitted without objection. DOHA received the transcript of hearing (Tr.) on January 29, 2010. The record closed on February 16, 2010, when I received Applicant's post-hearing submissions. They are admitted collectively and without objection as Ax. C.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes approximately \$12,196 for 13 delinquent debts (SOR ¶¶ 1.a - 1.m). In response to the SOR, Applicant admitted with explanation the allegations at SOR ¶¶ 1.d, 1.e, 1.g, 1.i - 1.k, and 1.m. He denied with explanation the remaining allegations. Based on a review of Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

Applicant is 46 years old and employed by a defense contractor. He requires a security clearance to perform the duties of his position as a trainer of military personnel in microwave and satellite antenna maintenance. Applicant enlisted in the U.S. Army in October 1984 and received an honorable discharge in November 1991. His primary mission responsibility was in the field of teletype communications, antenna repair, and satellite communications. He held secret and top secret clearances when he was in the Army. (Gx. 1; Tr. 5 - 7)

Applicant has been married twice. His first marriage lasted from December 1984 until he was divorced in August 1998. He re-married in August 1999. He and his second wife have been separated since 2005, and a finalized divorce is pending. (Gx. 1; Tr. 54) Applicant has five children (ages 25, 23, 21, 19, and 14). The two youngest, both from his second marriage, live with him. (Gx. 1; Tr. 35)

When Applicant and his second wife separated, he moved to the state where he currently resides, and he still had to pay for all of the marital and household expenses. However, he could rely on only his income to do so. While they were together, she handled their finances because he was always working. Applicant was not always well-informed about their bills and expenses when he and his wife were together, and it

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.

appears that as the marriage deteriorated several bills went unpaid. When he submitted his e-QIP, he disclosed that he had several past due debts. This was confirmed through a credit report obtained during his background investigation that showed he was delinquent on the debts listed in the SOR. (Gx. 5) Applicant knew he had some past due debts, and he had already resolved a delinquent car insurance debt for \$223 (SOR ¶ 1.m) in February 2009. But he was unaware of the true extent of his credit problems until he was interviewed by a government investigator in July 2009. Acting on the investigator's advice, he began contacting his creditors to resolve his debts. He also enrolled in his bank's credit reporting and monitoring service, through which he successfully disputed the medical debts in SOR ¶¶ 1.a - 1.c because they should have been paid by his employer-provided medical insurance. The bills were resubmitted to the insurance company and the debts were removed from his credit report. Applicant also successfully disputed the debts at SOR ¶¶ 1.g and 1.k, which were also removed from his credit report because they were not his. (Answer to SOR; Tr. 26 - 30, 39, 45; Ax. A)

The debts listed at SOR ¶¶ 1.h and 1.j were incurred as part of his employment between October 2004 and December 2007 as a satellite television systems installer. He was given a free satellite television subscription and a cell phone to use on the job. However, when he was laid off, those accounts were assigned to him. He paid the satellite television account (SOR ¶ 1.h) in March 2008. (Tr. 32 - 33, Ax. C) The cell phone account (SOR ¶ 1.j) is being paid through a debt repayment plan, discussed below.

As part of his efforts to resolve his debts, Applicant researched several debt management and credit repair services. He eventually settled on a company that demonstrated to his satisfaction that they would actually start repaying his debts when he gave them his money instead of, as occurs most often, taking their fee up front for several months while the debts continue to languish. In December 2009, he enrolled in a repayment plan through which he is repaying the debts at SOR ¶¶ 1.e, 1.f, 1.i, 1.j, and 1.k. He pays \$220 each month through automatic deductions from his checking account. Those debts, which total about \$9,706, will be paid off in 2012. Even before he enrolled in this program, he was making payments to the creditors listed in SOR ¶¶ 1.d and 1.e. (Tr. 27, 46 - 47; Ax. B; Ax. C)

Applicant has a positive monthly cash flow and he has not incurred any new debts. The only new blemish on his credit history is a state tax bill for \$319 in unpaid income taxes for tax year 2008. This debt arose from a mistake in his tax return for that year, and Applicant has made arrangements for the state to take the money out of his refund for tax year 2009. (Gx. 2; Tr. 49 - 53)

Applicant enjoys an excellent reputation among his professional and personal associates. He is successful in his work and his references repeatedly cite his reliability, honesty, hard work, and integrity in all facets of his work and personality. (Ax. C)

Policies

A security clearance decision is intended 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. Each decision must be a fair, impartial, and commonsense determination based on examination of available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. 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, by itself, conclusive. 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 AG ¶ 18 (Guideline F - Financial Considerations).

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. 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 Government.⁷

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

⁵ Directive. 6.3.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised 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 Government presented sufficient information to support the allegations in SOR ¶¶ 1.a - 1.m; that is, that Applicant owed \$12,196 for 13 delinquent debts. Available information showed that those debts were past due since at least 2005 and that some of them are still being resolved. Accordingly, the record 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 to the SOR and at hearing, Applicant established that the debts alleged were primarily the result of the failure of his second marriage. He showed that the debts listed at SOR ¶¶ 1.a - 1.c, 1.g, and 1.k were not his responsibility, and that he had paid the debts at SOR ¶¶ 1.d, 1.h, and 1.m. Additionally, he established that he had started trying to resolve his debts as early as February 2009, and that he is now repaying his remaining debts through an organized plan which uses automatic withdrawals from his checking account to ensure timely payment. Applicant's finances are sound and his circumstances have changed sufficiently that his financial problems are unlikely to recur.

Based on all of the foregoing, the record supports application of 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*); 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*); 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*); AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); and AG ¶ 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*). On balance, I conclude that the security concerns about his unpaid debt are mitigated.

Whole-Person Concept

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). Available information shows that Applicant, 46 years old, is a mature, responsible adult. He honorably served his country in the U.S. Army, where he learned the skills for which he was hired by his current employer. He has a stable history of employment since leaving the military in 1991, and his current job performance is excellent. Further, Applicant has been candid and forthcoming about his finances at all stages of his background investigation and clearance adjudication. His testimony at the hearing was credible and straightforward. Available information shows that Applicant was already acting to resolve some his debts when he applied for a clearance. The action he has taken since his July 2009 subject interview reflects well on his judgment and decision-making. The totality of information bearing on Applicant's circumstances supports a conclusion that he his financial circumstances will not be a security concern in the future. A fair and commonsense assessment⁸ of all available information bearing on Applicant's past and current circumstances shows he has addressed satisfactorily the Government's doubts about his ability and willingness to protect the Government's interests as his own.

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.m: For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 5, *supra*.