



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 09-05406
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 29, 2011

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 April 3, 2009, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain or renew 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 information obtained in his background investigation. 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 consistent with the national

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.

interest to grant or continue Applicant's access to classified information. On August 13, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)³ for financial considerations (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on September 23, 2010. Pursuant to a Notice of Hearing issued on November 16, 2010, I convened a hearing in this matter on December 9, 2010. The parties appeared as scheduled. The Government presented six exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 6. Applicant testified and submitted one exhibit that was admitted without objection as Applicant Exhibit (Ax.) A. (Tr. 30 - 33) He also presented one witness. I left the record open after the hearing so that Applicant could submit additional relevant information. (Tr. 65 - 66) The record closed on December 20, 2010, when I received additional information that has been admitted into the record without objection as Ax. B. DOHA received a transcript (Tr.) of the hearing on December 28, 2010.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$20,004 for five unpaid debts (SOR 1.a - 1.e). Applicant denied with explanation the debt alleged at SOR 1.a. He admitted with explanation the debts alleged at SOR 1.b - 1.e. Applicant's admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 44 years old and is employed by a defense contractor as an instructor for a company that trains military installation police forces. He served in the U.S. Marine Corps from September 1985 until September 2005, when he retired with an honorable discharge as a Gunnery Sergeant (E-7). Most of Applicant's career in the Marines was spent in law enforcement and physical security assignments. He held a security clearance up to Top Secret while on active duty. Applicant's DD-214 reflects numerous personal awards and extensive qualifications achieved for his assigned duties.

Applicant and his wife have been married since September 1990, and he has two children, ages 22 and 19. They have lived in the same house for nine years. After he left active duty, Applicant worked as a small engine mechanic until August 2008, when he was hired by his current employer.

While Applicant was on active duty, his wife handled their finances without his help. Applicant trusted her with their finances because she has experience in accounting. His wife currently works as an office manager. She previously worked for a

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

now defunct real estate development company, but lost her job around the time Applicant retired. Combined with a drastic reduction in his income when he retired, her loss of income meant they had trouble meeting all of their financial obligations.

Also contributing to Applicant's financial problems was the way his wife was managing their finances. Because she had her own poor credit when they married, she erroneously thought that opening and using more credit accounts would help rebuild her credit rating. When they lost her income and Applicant retired, many of their accounts became delinquent. Applicant did not know the true extent of their indebtedness until he asked his wife for input when he had to answer financial questions on his SF 86 in April 2009. Applicant disclosed therein that he had collection accounts, charge offs, and debts more than 90 or 180 days delinquent. He learned of more debts when he was interviewed by a Government investigator on April 30, 2009.

After he was interviewed in April 2009, Applicant and his wife began contacting their creditors and made arrangements to pay or otherwise resolve all of them. In response to DOHA interrogatories, Applicant provided information that showed he had paid numerous debts that were not alleged in the SOR. He also provided information showing that he and his wife had been able to modify their home mortgage to obtain a lower interest rate and resolve an arrearage they had incurred. Also in response to the interrogatories, Applicant provided a personal financial statement (PFS) that showed he and his wife had, as of June 2010, about \$4,500 remaining each month after expenses, which included payment on some of his debts. (Gx. 2)

Of the five debts alleged in the SOR, Applicant only owes four. The debt at SOR 1.a is a duplicate of the debt at SOR 1.c. Therefore, the total debt at issue here is actually about \$17,300. In response to the SOR, Applicant presented information that showed he had reached agreements with all four creditors to make monthly payments that would be automatically deducted from his bank account. At the hearing and in his post-hearing submission, Applicant established that he is, in fact, making the payments as agreed to with his creditors. (Tr. 47 - 50; Ax. B)

Applicant's supervisor since August 2008 regards him as thoroughly professional, reliable, and trustworthy. Applicant is often relied on to run their office in the supervisor's absence. In the course of his duties, Applicant is entrusted with sensitive information about their DoD clients' missions, and with personal identification information. Applicant has never failed to meet his obligations at work. Applicant's supervisor is familiar with Applicant's financial difficulties, yet he still enthusiastically recommended Applicant for a position of trust. (Tr. 34 - 40)

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

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

commonsense determination based on examination of all 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.

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

Analysis

Financial

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

⁵ Directive. 6.3.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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's information, as well as Applicant's admissions in his SF-86, in response to DOHA interrogatories, and in response to the SOR, established the allegations at SOR 1.a - 1.e. Credit reports obtained during his background investigation attributed to Applicant about \$20,000 in delinquent or past-due debt for five personal credit accounts. At hearing, however, it was determined that one of the alleged debts was a duplicate, thus lowering Applicant's total indebtedness to about \$17,000. Available information also established that Applicant failed to pay his debts when he and his wife experienced a loss of income. Also contributing to his past-due debt was his wife's misguided, but well-meaning, management of their finances. The debts are still being repaid or otherwise 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*).

By contrast, 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*); and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's debts became delinquent, in part, due to the unexpected loss of his wife's income. But they are now both gainfully employed and have a significant positive cash flow. In April 2009, four months before the SOR was issued, they began repaying their creditors through proactive efforts to negotiate with their creditors. The four debts for which they are still responsible are being repaid in a reliable, systematic manner. Given Applicant's increased income and his record of good-faith repayments, it is not likely he will again experience such financial problems. On balance, Applicant has mitigated the security concerns about his finances.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 44 years old, has been married for over 20 years, and honorably served for 20 years in the U.S. Marine Corps. He and his wife have responded in a mature, responsible way to their financial problems, which, together with available character testimony, reflects well on his overall good judgment and reliability. There has been no misconduct here, and Applicant has provided detailed information about his financial problems and efforts to resolve them. He previously held a security clearance without incident while in the military, and it is highly likely that Applicant will continue his efforts to meet his financial

obligations or to otherwise resolve them in a responsible way. A fair and commonsense assessment of all of the available information shows that Applicant has resolved any doubts about his suitability for access to classified information.

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.e: For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge