



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
-----)
SSN: -----) ISCR Case No. 09-05422
)
)
Applicant for Security Clearance)

Appearances

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

July 12, 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 denied.

On March 25, 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 a set 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 consistent with the

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.

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

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 1, 2010. Pursuant to a Notice of Hearing issued on April 6, 2010, I convened a hearing in this matter on April 26, 2010. The parties appeared as scheduled. The Government presented six exhibits (Gx. 1 - 6), which were admitted without objection. Applicant testified on his own behalf. I left the record open after the hearing to give Applicant time to submit additional relevant information. DOHA received the transcript of hearing (Tr.) on May 5, 2010. The record closed on May 13, 2010, when I received Applicant's post-hearing submission, which has been admitted without objection as Applicant's Exhibit (Ax.) A.

Findings of Fact

Under Guideline F, the Government alleged that Applicant accrued approximately \$83,934 for 13 delinquent debts (SOR 1.a - 1.m). Under Guideline E, the Government alleged that Applicant was arrested for, charged with, or had engaged in at least nine criminal offenses (SOR 2.a, 2.c, 2.e - 2.k) between 1992 and 2005; and that he was awarded an Other Than Honorable (OTH) Discharge In Lieu of Court Martial from the U.S. Army in 2001 (SOR 2.b) for being absent without leave (AWOL) from the Army, as alleged in SOR 2.d.

In response to the SOR, Applicant denied the allegations in SOR 1.d and 1.m, and admitted the remaining allegations. His admissions are incorporated herein as facts. Having reviewed the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 39 years old, and is employed by a defense contractor in a position that requires a security clearance. Applicant has worked for his current employer as a truck driver and transportation coordinator since February 2009. (Gx. 1) His performance in that position has been very good. His most recent performance appraisal was satisfactory, and he has been formally recognized for his work at least twice. Co-workers and other associates have praised him for his teamwork, diligence, work ethic, and enthusiasm for his work. (Ax. A)

Applicant graduated from high school in 1991. After a few years of working in various jobs, he joined the Army in 1998. He was discharged under other-than-honorable conditions in April 2001. When he submitted his e-QIP in March 2009, he indicated he received this discharge because he "[d]id not return for (sic) leave on time, several times. Each time was only a couple of hours." (Gx. 1, Section 15) However,

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.

Army records obtained during his background investigation reflect that, as alleged in SOR 2.d, Applicant was AWOL from January 4, 1999, until February 9, 2000. He was returned to the Army after civilian authorities arrested him on December 7, 1999, for burglary and assault charges. (Gx. 5; Gx. 6)

Applicant has been married since December 2000, but he and his wife separated in June 2005. They have not finalized a divorce. Applicant has two children by his wife, and eight children by other women. Applicant is paying \$806 each month in child support for four of his children. His monthly payments are garnished from his pay by a state child support enforcement agency. About \$200 of each payment is dedicated to a child support arrearage totaling about \$63,943. (Tr. 54; Gx. 4) Applicant disputes the balance due for his child support, but offered no support for his claim.

Between February 1992 and August 2005, Applicant was arrested eight times. He was arrested for possession of cocaine with intent to distribute in February 1992, but the charge was dismissed. (SOR 2.k) In March 1993, he was charged with resisting arrest and obstructing a police officer. He was convicted and sentenced to six months in jail and five years probation. (SOR 2.j) In July 1993, he was charged and convicted of disorderly conduct, for which he was jailed for 10 days and given two years probation. (SOR 2.i) In September 1993, he was fined and assessed court costs for discharging a firearm inside city limits. (SOR 2.h) In July 1994, Applicant was arrested for resisting arrest. (SOR 2.g) In October 1994, he was arrested for assault with a deadly weapon, but the charge was dismissed. (SOR 2.f) The following month, he was arrested for carrying a concealed weapon, but this charge was also dismissed. (SOR 2.e) In December 1999, while he was AWOL, Applicant was arrested and charged with burglary and assault. This charge was not prosecuted because he was returned to the Army. (SOR 2.c). In August 2005, he was charged with domestic assault. (SOR 2.a) (Gx. 5; Answer to SOR)

Applicant has been employed in his current position since February 2009, after being unemployed for two months. He earns about \$19 per hour. Based on a forty-hour work week, he earns about \$3,000 monthly. Before that, he was an over-the-road truck driver from June 2007 until November 2008. His income in that job varied between \$800 and \$2,000 monthly depending on the loads he hauled. (Tr. 42) From May 2006 until November 2007, he earned about \$14 hourly at a car factory. (Tr. 40)

Applicant was unemployed for medical reasons from October 2005 until April 2006. He also had medical problems while employed at the car factory in 2007. (Gx. 1; Gx. 3; Tr. 41) As a result, he accrued at least seven delinquent debts for medical services totaling about \$1,560. (SOR 1.e, 1.f, 1.h - 1.i) Applicant believes these debts should have been covered by insurance. In response to DOHA interrogatories, he submitted undated letters he sent to the creditors listed at SOR 1.f and 1.i - 1.l, seeking to resolve those debts. (Gx. 2) However, he has not shown that he has actually begun paying those debts or that his dispute about his medical debts is valid.

Applicant also accrued a delinquent debt of \$513 for an overdrawn bank account. (SOR 1.g) Applicant claims he paid \$154 of this debt and that he arranged with the creditor to pay \$88 each month to satisfy the rest of the debt. However, other than an

undated letter to the bank he included with his response to interrogatories, he has not corroborated his claims about this debt. (Gx. 2; Tr. 62)

In June 2006, Applicant financed the purchase of a sport utility vehicle (SUV). He paid the \$425 monthly payments on time despite the fact the SUV turned out to be a lemon. In November 2006, he returned the SUV to the dealer, and has claimed his understanding at the time was that he did not owe anything further. (Gx. 3; Tr. 57 - 58) However, a credit report obtained during his background investigation showed Applicant owed approximately \$11,247 to a collection agency (SOR 1.b) to whom this debt was referred in March 2007. In response to DOHA interrogatories, Applicant submitted an undated letter to the collection agency seeking to resolve this debt. (Gx. 2) However, there is no other information that reflects action by the Applicant regarding this debt.

Applicant's credit history also listed another car repossession debt for \$1,524 from March 2009. When Applicant was interviewed in June 2009 during his background investigation, he claimed he had paid this debt in full in April 2009. (Gx. 3) His claim is corroborated by a credit report he submitted with his response to DOHA interrogatories. Applicant also owes \$204 for a cash advance loan he obtained in December 2002 (SOR 1.c). In his subject interview, he stated he would pay this debt by the end of 2009, but he has not done so. (Gx. 3)

Applicant currently supports a woman with whom he lives. Her three children and one of his own also live with them. They currently are living paycheck to paycheck. He files his income tax returns on time as required, but refunds are diverted to help repay his child support arrearage. Applicant thinks he will never be able to repay the arrearage, as he will be paying support for at least the next 12 years (his youngest child is six years old) and the arrearage is still accruing interest. (Tr. 67 - 72) His efforts to resolve his child support arrearage primarily have consisted of asking the mothers of his children, who reside in four different states, to drop their claims for unpaid support. He has not been successful in this endeavor. (Gx. 2)

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 and 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

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

⁵ Directive. 6.3.

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 ¶ 15 (Guideline E - Personal Conduct) and 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

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 accrued about \$83,934 for 13 delinquent debts

⁶ See *Egan*, 484 U.S. at 528, 531.

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

over the past seven years. Aside from the car repossession debt at SOR 1.d, available information indicates his debts, four of which are less than \$100 each, remain unpaid as of the hearing. 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 the hearing, Applicant claimed that many of his debts arose when he had medical problems and when he was unemployed between 2005 and 2007. He also claimed that his medical bills should have been paid through employer-provided medical insurance. As to his child support obligations, he is still repaying a significant arrearage through a state-imposed garnishment and will be repaying that debt, as well as his ongoing child support obligations, for at least the next 12 years. He has no monthly cashflow, and he was unable to document any of his claimed disputes with his creditors. Despite being steadily employed for the past three years, Applicant has not been able or willing to resolve even the smallest of his debts.

Accordingly, the record does not support applications of the relevant mitigating conditions under AG ¶ 20; namely, 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*). The security concerns about his finances are not mitigated.

Personal Conduct

The Government also presented sufficient information to support its allegations that Applicant was arrested for, charged with, or had engaged in at least nine criminal offenses (SOR 2.a, 2.c, 2.e - 2.k) between 1992 and 2005; and that he was awarded an Other Than Honorable Discharge In Lieu of Court Martial from the U.S. Army in 2001 (SOR 2.b) for being absent without leave (AWOL) from the Army as alleged in SOR 2.d. Applicant also admitted all of these allegations. The security concern raised by the facts thus established, as stated at AG ¶ 15, is that:

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.

Applicant's behavior since 1992 constituted criminal conduct. However, most recently, he was charged in 2005 and 2002 with offenses that were dismissed. Aside from the admitted fact of his arrest, there is insufficient information in the record to support a finding that he, in fact, assaulted anyone or burgled anyone's residence. The last documented criminal conduct, therefore, was in 2000, when he was AWOL, which is a criminal violation of the Uniform Code of Military Justice and was the basis for his OTH discharge. As such, it was not recent and likely not disqualifying under the adjudicative guideline for criminal conduct.

Nonetheless, all of the information bearing on Applicant's conduct since 1992 requires application of the disqualifying condition at AG ¶ 16(c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*). Applicant was not candid about the circumstances of his OTH discharge when he submitted his e-QIP, and he failed to disclose the full extent of his criminal conduct. Also, he has mismanaged his finances and other aspects of his personal life in a way that reflect adversely on his judgment and reliability. Given the length of his misconduct (nearly 18 years) and his lack of candor about his background, there is no support for application of any of the mitigating conditions under AG 17. The security concerns raised by his personal conduct are not mitigated.

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 39 years old and presumed to be a mature adult. Current references from co-workers and friends laud his work ethic and dedication, but do not reflect any knowledge of the adverse information in his background. Further, as noted above, he has not been candid about his Army service. He also continues to struggle financially, but he has not demonstrated that he has the ability or willingness to correct his financial problems. Applicant's long-term obligations to numerous children and their mothers will further hinder any favorable change in his circumstances. On balance, a fair and commonsense assessment⁸ of all available information bearing on Applicant's past and current circumstances shows he has not satisfactorily addressed the government's doubts about his ability or willingness to protect the government's interests as his own. Because protection of the national interest is the paramount concern in these adjudications, those doubts must be resolved against the individual and in favor of the Government.⁹

⁸ See footnote 5, *supra*.

⁹ See footnote 7, *supra*.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.d - 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.k:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant to have access to classified information. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge