



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



In the matter of:)	
)	
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SSN: -----)	ISCR Case No. 09-05534
)	
Applicant for Security Clearance)	

Appearances

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

June 18, 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 April 6, 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 information about 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 December 10, 2009, 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 responded to the SOR and requested a hearing. The case was assigned to me on February 5, 2010. Pursuant to a Notice of Hearing issued the same day, I convened a hearing in this matter on February 24, 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 and proffered three exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - C. The record closed on March 1, 2010, when I received Applicant's post-hearing submission, which is included in the record without objection as Ax. D. DOHA received the transcript of hearing (Tr.) on March 4, 2010.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes approximately \$1,172,651 for 12 delinquent debts (SOR 1.a - 1.l); It was also alleged that, in June 1997, he was discharged of other debts through a Chapter 7 bankruptcy petition filed in February 1997 (SOR 1.m). In response to the SOR, Applicant admitted with explanations all of the allegations. Applicant's admissions are entered as facts. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I also make the following findings of relevant fact.

Applicant is 53 years old and requires a security clearance for his job with a defense contractor, which he has held since December 2008. Applicant and his wife have been married since September 1981, and they have three children (ages 32, 27, and 13).

Applicant served in the United States Army from January 1986 until he was honorably discharged for medical reasons in February 2006. After January 1989, Applicant served in the Army Reserve. With short breaks in service, he served a total of 19 years, of which about eight years were spent on active duty. He was recalled to active duty for Operations Desert Shield and Desert Storm from November 1990 until July 1991, and for Operation Iraqi Freedom from December 2003 until February 2006. Between recalls to active duty, Applicant was an inactive drilling reservist obligated to drill one weekend monthly and serve two weeks of annual active duty.

After Applicant was released from active duty in 1991, he was either unemployed or underemployed for long periods of time. The only steady job he held was as a driver education instructor. By 1997, he and his wife had accrued about \$30,000 in debt they could not pay. In February 1997, they filed a Chapter 7 bankruptcy petition through

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.

which they were discharged of their debts in June 1997. Applicant earned an active duty wage as a Staff Sergeant in the Army from the time he was recalled in 2001 until his discharge in 2006.

When Applicant was medically discharged in 2006, he was awarded \$47,976 as disability severance pay because he had not yet become eligible for a reserve retirement. He was to be paid \$9,000 every two weeks until the full amount was disbursed. Applicant was also undergoing weekly treatment for his service-related injuries at a Veterans Administration (VA) medical facility in State A, where he was discharged. He decided to use his severance pay to buy two properties in State A, one of which he lived in and one he rented out to produce additional income. At the time, Applicant also owned a third house in State B, his home of record, which he and his wife used as their personal residence before his last recall to active duty. Applicant's wife stayed in State B even after he was discharged.

Applicant was initially given a 20% disability for his injuries. His disability was later increased to 70%, for which he was to receive about \$1,400 monthly from the VA as a disability benefit. However, when Applicant had actually received about \$35,985 of his buyout from the Army, the VA informed Applicant that before he could receive his disability, his early buyout payments would have to be recouped by the Army. The VA intended to withhold the \$1,400 disability payments until the \$35,985 was reached. After Applicant appealed to both the VA and a U.S. Senator, he has been receiving his monthly disability pay since May 2007. (Ax. D) It is unclear if he will be awarded the balance of his severance pay. Applicant knew when he bought the two houses in State A that he would not receive his disability benefits monthly until the VA had recouped the disability severance. (Tr. 87 - 88)

While his disability pay was being withheld, Applicant continued to live on the money he had already received. His attempt to rent out one of his houses in State A did not work out. The renter, an Army enlisted person, was discharged early, broke the lease early, and left behind significant damage to the property. Applicant also tried to start a small grocery store business, but that endeavor failed as well. The debt at SOR 1.d is a duplicate of the debt at SOR 1.i, which is for an unpaid lease of a credit card machine Applicant used in the store.

To try to make ends meet and to support his mortgage obligations in State A, Applicant cashed out the equity in his primary residence in State B. That equity loan for \$84,916 is listed at SOR 1.a. The \$340,000 first mortgage on that property is listed at SOR 1.h. However, both loans were consolidated by the lender listed at SOR 1.g for \$479,900. SOR 1.a and 1.h are resolved in favor of Applicant as they are essentially duplicates of the debt at SOR 1.g.

From February 2006, when he was discharged from the Army, until December 2008, when he was hired by his current employer, Applicant was either unemployed or underemployed, as he tried to make his rental and his grocery store produce income. By early 2007, he was unable to make payments on any of his mortgages. The rental property mortgage in State A was foreclosed (SOR 1.i for \$137,837) and the house was sold at auction. Applicant no longer has any obligation for this loan. The delinquent

mortgage for his other house in State A (SOR 1.f for \$112,334) was resolved through a quit claim, in which the lender approved the assumption of Applicant's obligation by a third party. Applicant no longer owes anything for this property. (Attachments to Answer to SOR; Ax. D)

The mortgage on Applicant's primary residence in State B (SOR 1.g) was also foreclosed in 2007. The house was sold at auction and Applicant has no continuing obligation for this loan. As to all of his real estate obligations, Applicant presented information showing that he was in contact with the lenders and was trying to sell the houses or otherwise resolve his obligations before they became delinquent. (Ax. D)

In 2006, Applicant cosigned a mortgage for his brother. He helped his brother pay expenses for the property, such as his utilities and homeowners association dues. When Applicant's brother died in August 2009, Applicant was required to resolve the financial obligations associated with the house. Applicant sold the house through a normal real estate transaction, but he did not resolve a homeowners association dues account (SOR 1.j for \$1,105). The association obtained a civil judgment to collect the debt. He also owed \$288 for an unpaid electrical bill (SOR 1.e).

Applicant also accrued two delinquent credit card accounts (SOR 1.b for \$7,391, and SOR 1.c for \$3,872) and an unpaid medical bill (SOR 1.k for \$338) after he left the Army. Applicant has paid the debts listed at SOR 1.e and 1.k. (Answer to SOR; Ax. B and C) In December 2009, he enrolled in a debt consolidation and repayment plan through the Consumer Credit Counseling Service (CCCS), a reliable non-profit organization which negotiates with creditors and brokers debt payments. Applicant is paying \$436 each month to resolve the debts at SOR 1.b, 1.c, 1.j, and 1.k by 2013. The plan will pay off his debts by 2013. (Ax. A)

Applicant's current job pays him about \$1,928 monthly. With his disability pay, he earns about \$3,328 each month. After expenses, including his \$436 CCCS payment, Applicant has about \$1,000 remaining each month. (Gx. 2; Tr. 72 - 73, 81 - 82) He files his annual tax returns on time and has accrued no new debt. He owns one car, which is paid for.

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 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

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

⁵ Directive. 6.3.

listed in ¶ 2(a) of the 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

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

⁶ See *Egan*, 484 U.S. at 528, 531.

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

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. However, the allegations at SOR 1.a, 1.d, and 1.h are duplicates of other allegations, and are resolved for the Applicant. Additionally, because Applicant presented information in response to the SOR and at the hearing that shows the debts at SOR 1.e and 1.k have been paid, those allegations are also resolved for the Applicant. Nonetheless, the Government's information shows that Applicant accrued seven delinquent debts totaling about \$741,137. Finally, the Government established, and Applicant admitted, that he was discharged of about \$30,000 in debt through a 1997 Chapter 7 bankruptcy petition. Accordingly, available information 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 his financial problems since his Chapter 7 discharge arose from a combination of the VA's recoupment of his disability severance payment and the failures of his small business and his rental property. From about mid-2006 until he was hired by his current employer in late 2008, he had little steady income. The debt discharged through the 1997 bankruptcy was the result of unemployment or underemployment after his release from active duty in 1991. 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 circumstances involving his disability severance, the withholding of his disability benefits, and the failures of his small business and rental property amount to unforeseen or uncontrollable events, Applicant used poor judgment in purchasing the two State A houses knowing that the VA was recouping its payments to him. Nonetheless, Applicant acted reasonably when he realized he could not keep the houses. He tried to sell each of the properties or otherwise resolve his mortgage obligations through short sale or quit claim.

As to the other debts he incurred after his military discharge, once he had steady income through his current job, Applicant enrolled in a reliable repayment plan with CCCS. He has no recently-incurred debts and has a positive cash flow of about \$1,000 after paying his CCCS and other obligations. Finally, he did not personally pay his various mortgage obligations, but they have been satisfactorily resolved. Those debts are no longer a potential source of pressure in response to which he might act inappropriately to get money to repay them. The foregoing supports application of the mitigating conditions at 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*). On balance, available information is sufficient to refute, mitigate, or extenuate the security concerns about Applicant's finances.

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, 53 years old, served in the U.S. Army and Army Reserve for nearly 20 years. His early discharge resulted from service-related medical problems, but conflicting policies about his post-service benefits severely hampered his finances for about two years. Applicant fully disclosed all of his delinquencies when he applied for a clearance for his current job, and since he has had a steady income on which to rely, he has acted to resolve the debts within his control. While in hindsight he probably should not have bought the two houses in State A, he did not simply abandon his obligations when he could not keep up the payments on his mortgages. His current circumstances are much more stable than when he left the Army, and it is unlikely he will incur such debt 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:	AGAINST APPLICANT
Subparagraph 1.a - 1.m:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 5, *supra*.