



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



In the matter of:)
)
) ISCR Case No. 09-05547
)
)
Applicant for Security Clearance)

Appearances

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

June 18, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on March 24, 2009, to request a security clearance required as part of his employment with a defense contractor (Item 5). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

¹ See Executive Order 10865, as amended; DoD Directive 5220.6 (Directive), as amended; and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On March 8, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).

Applicant received the SOR on March 18, 2010. (Item 3) He signed his notarized Answer on March 19, 2010 (Item 4), and requested a decision without a hearing. In his Answer, Applicant admitted all allegations in the SOR.² On April 16, 2010, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the Government's preliminary decision to deny Applicant's request to be granted a security clearance. The FORM contained eight documents, identified as Items 1 through 8. The FORM and attached Items were forwarded on April 20, 2010, and received by Applicant on May 6, 2010. He was given 30 days from the date he received the FORM to respond. DOHA received his Reply on May 17, 2010 (Reply). The case was assigned to me on June 7, 2010, for an administrative decision based on the written record.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated in this decision as findings of fact. After a thorough review of the pleadings, the FORM, and Applicant's Reply to the FORM, I make the following additional factual findings.

Applicant is 52 years old. He is a high-school graduate, and since 2001, he has held a series of administrative positions. Some of these positions were held through temporary staffing agencies, and each lasted from a few months to 18 months. He completed a security clearance application in relation to an administrative position with a defense contractor in January 2009. Although his security clearance application does not list any periods of unemployment, he told the investigator at his security interview in May 2009, that he was unemployed at that time and had not worked since June 2008. He was unemployed as of the date of his Reply in May 2010. (Items 5, 6; Reply)

Applicant is single and has no children. He lives with relatives and uses public transportation. He contributes to his relatives' expenses under an informal arrangement. The record contains no financial information on his income, expenses, or net remainder after expenses. (Item 6)

The SOR alleges six debts, totaling \$38,545, which became delinquent between 2005 and 2007. In his Answer to the SOR, Applicant admitted each debt, but noted that the amount alleged in each allegation was not correct; he did not provide any further information or documentation to support this claim. In his response to the FORM, Applicant elaborated on his claim that the amounts owed were incorrect. (Items 7, 8) The SOR lists the following debts:

² In his March 2010 Answer to the SOR, Applicant admitted all six allegations, 1.a. through 1.f. However, in his reply to the FORM two months later, Applicant denied allegations 1.c. and 1.e. I consider allegations 1.c. and 1.e. denied.

- Allegation 1.a.: debt of \$3,760 owed to bank A. Applicant states that he owes only \$2,000. (Reply)

- Allegations 1.b., 1.c., and 1.e.: three debts owed to bank B for \$3,013, \$6,562, and \$8,687 (respectively), totaling \$18,262. Applicant claims that he has only one delinquent account with this bank, and does not recognize the other two accounts. He states that he currently owes \$15,000 to bank B. (Reply)

- Allegation 1.d.: debt formerly owed to bank C, currently held by a collection agency, for \$6,777. Applicant contends that he owes \$3,000. (Reply)

- Allegation 1.f.: debt formerly owed to bank D, currently held by a collection agency, for \$9,746. Applicant states that he owes \$5,000. (Reply)

In his Reply, Applicant opined that collection agencies engage in “excessive credit practices” that caused the amount he owes to be “inflated.” He also noted that he made payments on his debts when he was working, even though his positions were temporary. He did not provide documentation to support these debt payments. He stated that he is willing to pay his debts, and has worked with a law firm to help him do so. The record contains no additional information on any agreement he might have with this law firm, or any payments plans or settlements that may have been obtained by the firm. (Item 6; Reply)

During Applicant's security interview, the agent noted that Applicant had no detailed knowledge of any of the debts, was unaware of how to dispute debts, or that he could make small payments towards his debts. Applicant informed the agent that, when he is employed, he would make payments on the debts he recognizes. (Item 6)

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 AG.³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the AG, commonly referred to as the “whole-person” concept. 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 are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

³ Directive § 6.3.

A security clearance decision is intended only 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. 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.⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, 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 his 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.⁶

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The record evidence shows that Applicant's substantial debts became delinquent between 2005 and 2007 and remain delinquent. He is willing to pay them, but because of underemployment and unemployment, he has been unable to do so. Disqualifying conditions AG ¶19(a) (inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply.

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

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ *Id.* at 531; AG ¶ 2(b).

Under AG ¶20, the following potentially mitigating conditions are relevant:

(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;

(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;

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

As of the date the SOR was issued, Applicant had more than \$38,000 in delinquent debt. His financial problems are not in the distant past, because these debts remain unpaid. Moreover, as it appears that Applicant has been unemployed for approximately two years, it is likely that he be not be able to resolve these delinquencies in the foreseeable future. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) may be relevant because Applicant has worked only temporary and short-term jobs for the past ten years. However, I cannot determine from the record whether this situation results from lack of diligence on Applicant's part, or from circumstances beyond his control. In addition, Applicant has not provided documentation of reasonable efforts to deal with his debts. Applicant claims that he worked with a law firm on resolving his debts, but the record contains no substantiation of that claim. AG ¶¶ 20(b) and 20(c) cannot be applied.

Applicant states that he owes less on each debt than alleged in the SOR. However, he failed to supply evidence to support his claim. Therefore, I cannot determine whether the basis for his contention is reasonable. Applicant provided no documentation supporting his statement that he made payments on his debts, that he has payment plans in place, or that the balances are, in fact, lower than the alleged amounts. There is no evidence indicating that Applicant has made any good-faith efforts to resolve his debts. The Appeal Board defines a "good-faith effort: as acting in a way that shows reasonableness, prudence, honesty and adherence to duty or obligation.⁷ Promises to act in the future are insufficient to constitute good-faith efforts. An applicant is not required to have paid every debt, but he or she must show a reasonable plan for repayment and actions to support the plan. Although Applicant promises to pay his

⁷ ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

debts when he is able, he provided no documentation supporting a plan to do so. AG ¶ 20(d) does not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

(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.

Applicant is a mature adult of 52 years. For almost ten years, he has had temporary positions of short duration, which resulted in his accumulation of significant debt. Applicant made several claims of mitigation in his Reply: (1) that he has made payments on his debts; (2) that he owes about half the alleged amount on each debt; and (3) that he has worked with a law firm to help him resolve his debts. However, Applicant requested an administrative determination, which requires reliance on the written record. Here, Applicant failed to submit any written evidence about his past efforts to address his delinquent debts, or his future plans to satisfy them. He did not provide documentation to substantiate his claims of debt payments, financial counseling, or current balances on each debt. He did not provide information about his current financial situation including his income, his expenses, or his net monthly remainder. Although he states that he is willing to pay his creditors, there is no evidence of a concrete plan to do so, nor any steps taken in that direction. He mentions that he "can give references of Vice Presidents of Companies, Directors, Pastors, Professional Individuals, and Company Managers who will vouch for my character" but did not provide any references. He noted that his job performance was rated "outstanding," but did not supply performance evaluations. The written record is inadequate to find for the Applicant under Guideline F.

For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited guideline. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised by his substantial indebtedness. Such doubts must be resolved in favor of the national interest.

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 as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. – 1.f.	Against Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge