



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



In the matter of)
)
) ISCR Case No. 09-05833
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel

For Applicant: *Pro se*

March 30, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, 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 a Questionnaire for Sensitive Positions (Standard Form 86), signed on March 4, 2009, to request a security clearance required as part of his employment with a defense contractor. 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.

On October 9, 2009, 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).² In his undated, notarized Answer to the SOR, Applicant admitted to all allegations under Guideline F except subparagraphs 1.a., 1.b., 1.c., 1.f., 1.g., and 1.k. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on December 7, 2009, and the case was assigned to me on December 16, 2009. DOHA issued a Notice of Hearing on January 6, 2010, and I convened the hearing as scheduled on January 28, 2010. During the hearing, I admitted four government exhibits, identified as Government Exhibits (GE) 1 through 4. Applicant testified, and offered two exhibits, admitted as Applicant's Exhibits (AE) A and B. I held the record open for Applicant to submit additional documentation. He timely submitted one document, admitted as AE C. DOHA received the transcript on February 4, 2010.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, who is 33 years old, completed some college credits but did not earn a degree. He married in 1999 and divorced in 2006. Applicant has a four-year-old daughter who lives with his first wife. He pays \$500 per month in child support. He married his second wife in 2008. He has two step-daughters, 9 and 12 years old. Since December 2008, he has been an evidence control specialist for a defense contractor. From 2005 to 2008, he worked full-time in the National Guard. (GE 1; Tr. 21)

Applicant attributes his financial problems to a series of events that began in 2005, when he relocated from an area with a low cost of living to one with a higher cost of living. He began working full-time in the National Guard, which

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the revised Adjudicative Guidelines (AG), which were implemented by the Department of Defense on September 1, 2006. The AG supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

increased his pay. He suffered a stroke in March 2006. In October 2006, he divorced. The divorce resulted in the loss of one income. Additionally, his wife had handled the finances, and Applicant was unfamiliar with how to do it on his own. He rented an apartment that had poor living conditions, lack of hot water, and mold. He realized he was having debt problems, and in the fall of 2006, he moved in with a roommate to lower his costs. (GE 1; Tr. 16-22)

In January 2008, Applicant met a woman, who is now his second wife. Applicant testified that after he married, his financial situation improved initially. But in December 2008, Applicant's wife's ex-husband stopped paying \$1,000 per month child support. At about the same time, the interest on Applicant's adjustable-rate mortgage changed and Applicant's monthly payment rose from \$1,000 to \$1,900. He had high transportation costs because of a long commute. In January 2009, Applicant began working for his current employer. His daily commute decreased by 120 miles per day. He also received a salary increase of \$10,000 annually. (GE 1; Tr. 16-24, 28-29)

Applicant has been continuously employed for the past ten years. His gross annual income is \$58,000. (Tr. 24) His gross monthly pay is \$3,400. His wife, who will graduate FROM school in May 2010, does not contribute to their income, but she handles their bills. His two car loans are paid. He does not use credit cards. Applicant testified that after paying his monthly expenses, he had estimated his monthly remainder at \$865. However, in his post-hearing submission, he provided an expense list showing a monthly net remainder of \$502. His expenses include rent (\$1,700), utilities (\$416), food \$300, transportation \$300, insurance (\$116), and cable \$65. His wife tries to put money aside each month for savings, but Applicant is unaware of the amount in his savings account. He received financial counseling in December 2009 through his employer's Employee Assistance Program (EAP). He plans to resolve his debts through a debt consolidation company. He hopes not to have to file for bankruptcy. (AE C; Tr. 24-30, 40)

Applicant's operations manager in his current position provided a character reference. He stated that Applicant has impressed their government-agency client. He noted Applicant's integrity, dedication, and leadership skills. He also stressed Applicant's candor with his manager about his financial situation. He opined that Applicant will not repeat his financial mistakes. (AE B)

The 16 debts listed in the SOR started to accrue in about 2006, and total approximately \$37,000. The debts appear in Applicant's credit reports of April, September, and November 2009. The status of Applicant's SOR debts follows. (GE 2, 3, 4)

The following debt is paid:

- **Medical debt: Allegation 1.m. (\$5)** - Applicant provided documentation to show he paid this debt in October 2009. (AE A)

The status of the remaining unpaid SOR debts follows.

- **Bank service fees: Allegations 1.a. (\$224) and 1.c. (\$208)** - Applicant testified that these represent the same debt. Applicant was charged a service fee in 2006 on a checking account that he did not use. He provided a letter showing that he contacted the creditor in November 2009. His dispute had not been resolved as of the date of the hearing. (Answer; Tr. 30)
- **Telecommunications: Allegations 1.b. (\$1,022), 1.k. (\$225), and 1.l. (\$343)** - Applicant testified he paid the debt at 1.b., but provided no supporting documentation. He disputes the debt at 1.k. for cable boxes that he states he returned. He contacted the creditor in December 2009 and was told the boxes had been returned. He has been awaiting written confirmation, but has not received it or followed up with the company. The debt at 1.l. is for an unpaid cable bill, which he intends to pay in the future (Tr. 40-41)
- **Medical: Allegations 1.d. (\$204), 1.e. (\$123), and 1.n. (\$102)** - Debts at 1.d., 1.e., and 1.n. are for emergency room visits concerning Applicant's stroke. He contacted several medical creditors in December 2008 and some agreed to accept settlements, but other expenses arose, and Applicant did not pay the medical debts. He intends to pay them. (Answer; Tr. 35)
- **Utilities: Allegations 1.f. (\$328) and 1.j. (\$329)** - Applicant believes these two allegations refer to the same debt. It is unpaid, but he intends to pay it. (Tr. 36)
- **Rent: Allegation 1.g. (\$3,056)** - Applicant disputes this debt. He claims it is related to a debt owed to an apartment complex where he moved after his divorce. The complex at times had mold and no hot water. Applicant contacted the Better Business Bureau. He moved for health reasons, but the complex owner would not release him from his lease. He refused to pay the last month's rent. The creditor filed a suit and won, and Applicant paid \$652 through garnishment of his pay. He believes his payment resolved the dispute. He has contacted the creditor but has not received a reply. He provided no documentation concerning this debt. (Answer; Tr. 36-39)

- **Personal loan: Allegation 1.h. (\$13,586)** - Applicant obtained a loan in 2005 to begin paying some of his debts. He made payments until 2006, when he was no longer able to afford them. The debt remains unpaid but he intends to pay it. (Answer; Tr. 38-39)
- **Retail purchase: Allegation 1.i. (\$1,373)** - Applicant bought a computer in 2006. He made payments initially, but stopped that same year when he could no longer afford the payments. He intends to pay the debt. (Tr. 39-40)
- **Repossession: Allegation 1.o. (\$10,027)** - Applicant purchased a 2005 automobile, and made timely payments on time. After his divorce and relocation, he made payments until he could no longer afford to do so. The debt is unpaid, and Applicant intends to pay it. (Answer; Tr. 44-45)
- **Credit card - Allegation 1.p. (\$5,580)** - Applicant made timely payments on this bank credit card during his first marriage. However, after his divorce and relocation, he was unable to keep up with the payments. (Answer; Tr. 45)

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 Guidelines, commonly referred to as the “whole-person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. 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 Guideline F (Financial Considerations) at AG ¶ 18.

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.

³ Directive 6.3

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

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 judgment, reliability and trustworthiness to 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 about 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 evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). Applicant owes almost \$37,000 in delinquent debt. His debts became delinquent starting in 2006. He provided documentation that shows payment of one \$5 debt. Otherwise, his debts remain unpaid, demonstrating a history of failure to meet financial obligations.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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;

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

(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.

Although Applicant's debts have been accruing for several years, they are not in the distant past, as they remain unpaid. The fact that most remain unpaid, despite having a monthly remainder of approximately \$800, indicates that they may well remain unpaid in the future. His failure to make consistent attempts to resolve his debts raises questions as to his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies in part because numerous events occurred that affected Applicant's finances and which he could not control or necessarily foresee. When he divorced in 2006, he was reduced to a single income and lost the person who managed his finances. He also had serious medical issues, including a stroke in March 2006. These factors had an effect on his financial status and were beyond his control. However, these events occurred more than three years ago. Since that time, Applicant has remarried to a woman who handles their finances and tries to put aside money in savings each month. Moreover, he has been steadily employed for at least the past ten years. He decreased his gas expenses significantly when he began his new job in 2009, and he increased his salary by \$10,000. Nevertheless, Applicant has not acted responsibly to resolve his significant delinquent debt load.

Applicant receives some mitigation under AG ¶ 20(c), because he sought financial counselling through his employer's EAP. However, he did not seek it until December 2009, years after his financial problems began. He sought help only after he had received the SOR, indicating the action may have been simply a response to the security clearance process.

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant was on notice that delinquent debts were a security concern after he completed his

security clearance application in March 2009, yet he has accomplished little to resolve his debts in the past year. He paid one small debt, but he still owes almost \$37,000. His financial situation is not under control. Without evidence of a plan to resolve indebtedness, and steps taken to implement it, a good-faith effort to resolve debts cannot be substantiated. AG ¶ 20(d) does not apply.

Applicant disputes ¶¶ 1.k. and 1.g. However, this mitigating condition requires that an Applicant take steps to resolve the issue. Here, Applicant provided no documentary evidence that he reported the dispute to the creditor or credit reporting agencies. AG ¶ 20(e) does not apply.

In all, the partial mitigation available to Applicant under AG ¶ 20(b) and 20(c) is insufficient to outweigh the disqualifying conditions that apply.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has accumulated substantial debts over the past several years. He has not established payment plans, and has not provided evidence that shows efforts to resolve his financial situation. An applicant is not required to be debt-free, or establish that he paid every debt. But he must demonstrate that he has established a plan to resolve his debts and has taken action to implement that plan. Here, Applicant has not established such a plan, and he still carries \$37,000 in debt, with no substantive efforts or reasonable plan to resolve it.

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 currently raised about his suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

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.l.	Against Applicant
Subparagraph 1.m.	For Applicant
Subparagraphs 1.n. – 1.p.	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