



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 09-06868
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Applicant for Security Clearance)

Appearances

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

March 9, 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 denied.

On February 27, 2006, 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 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

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 continue Applicant's access to classified information. On July 21, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which 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 September 30, 2010, I convened a hearing in this matter on October 14, 2010. The parties appeared as scheduled. The Government presented seven exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 7. Applicant testified and submitted three exhibits that were admitted without objection as Applicant Exhibits (Ax.) A - C. Additionally, I left the record open after the hearing to allow Applicant to submit additional relevant information. However, Applicant did not make any post-hearing submissions, and the record closed on October 29, 2010. DOHA received a transcript (Tr.) of the hearing the same day.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed about \$12,561 for 16 unpaid debts (SOR 1.a - 1.p), and that he had filed for bankruptcy protection three times (SOR 1.q - 1.s). Applicant denied the allegations at SOR 1.b and 1.n, but admitted the remaining allegations. 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 50 years old and is employed by a defense contractor as a security guard at a shipyard. He has held that job since November 2005. Since March 1986, Applicant also has held a second job as a part-time security guard at a local hospital. From February 1996 until he was hired by a defense contractor in 2005, Applicant was a firefighter. He served in the U.S. Army from November 1979 until his honorable discharge from active duty in November 1982. He held a security clearance during his enlistment. (Gx. 1)

Applicant has been married four times. His first three marriages ended in divorce in 1991, 2000, and 2006. Applicant has no children and has no financial support obligations from his past marriages, but agreed to take on the marital debt as part of each divorce. He and his current wife have been married since November 2009. She works part-time as a nurse and handles their finances by paying all of their bills. She owns a house which she rents out, and they live in a house that Applicant bought in 2007. (Tr. 50 - 51, 58 - 59)

Applicant has filed for bankruptcy protection three times. In October 1988, he filed a Chapter 13 petition and completed a wage earner's plan to pay off his debts by

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.

1994. In December 1995, he filed another Chapter 13 petition and successfully completed a wage earner's plan in January 1998. Applicant filed that petition because he had become financially overextended. (Tr. 42) In March 2002, Applicant filed another Chapter 13 petition because he was having difficulty making his mortgage payments. He had fallen behind by about four months on the mortgage he took to buy a house in 2000. The Chapter 13 petition stayed a pending foreclosure on that mortgage. Applicant was able to keep the house until August 2004, when he fell five months behind on his mortgage. He also was unable to continue making the required payments on his wage earner's plan and the Chapter 13 petition was dismissed. Applicant subsequently lost his house to foreclosure. (Gx. 2; Tr. 26 - 31, 41 - 42)

For tax year 2004, Applicant underpaid his income taxes. In June 2005, the Internal Revenue Service (IRS) imposed on him a tax lien for \$7,232. (SOR 1.o) For tax years 2005 through 2008, Applicant also underpaid his income taxes. A lien was imposed for taxes owed from those years for \$56,000. (Ax. A) In about April 2009, Applicant reached an agreement with the IRS whereby he now pays \$69 each week through payroll allotment. At about \$280 each month, Applicant will have his IRS debt paid off in about 20 years. Applicant underpaid his taxes by requesting tax exempt status in 2004 so he could have more cash in each paycheck. Additionally, as a result of his underpayment of his federal taxes, two state income tax liens were also imposed on Applicant for a total of about \$138. Applicant claims those are paid because he has been getting his state tax refunds that have not been reduced to satisfy the liens. (Gx. 2; Gx. 5; Ax. A; Tr. 62 - 63)

Aside from his IRS and state tax debts discussed, above, Applicant accrued several other delinquent debts. As alleged in SOR 1.a, Applicant became delinquent on a personal loan taken from the credit union at the hospital where he works as a part-time security guard. Applicant owes \$2,238 and has not made arrangements to pay that debt, for which he last made a payment in January 2005. This loan was obtained so he could pay off some of his other debts. (Gx. 5; Tr. 35 - 36)

Applicant also owes \$368 for an unpaid telephone bill (SOR 1.c) that has been delinquent since October 2007, when he discontinued service but failed to pay the last bill. He claims, but did not prove, that the debt alleged at SOR 1.d is a duplicate of the SOR 1.c debt. (Gx. 2; Gx. 5; Tr. 37)

As alleged in SOR 1.f, 1.k, and 1.m, Applicant owes about \$3,000 for three delinquent credit cards. He claimed he is making monthly payments on those debts but did not document this claim. (Gx. 2; Gx. 5; Tr. 38 - 40)

Applicant owes \$84 for an unpaid cable television account (SOR 1.e). He failed to pay his last bill in 2007 when he changed residences. This debt has not been paid. (Gx. 2; Gx. 5; Tr. 38)

In 2005, Applicant took out a loan to finance the purchase of a new car for \$14,000. He was required to pay \$460 each month for 60 months. He made the required payments for about a year, then defaulted on the loan and the car was repossessed in November 2006. Applicant was assessed a debt of \$4,490 as the

remainder owed after the car was resold. (SOR 1.k) In 2009, the creditor agreed to accept \$280 each month to resolve the debt, Applicant did not make more than a few payments. (Gx. 2; Tr. 39, 43 - 44)

In December 2008, Applicant suffered a heart attack (Gx. 2; Tr. 39, 57 - 58) and could not work for a few months. He incurred medical bills in the form of co-payments beyond what his insurance covered. He is now paying those debts (SOR 1.g - 1.l) through payroll deductions from his part-time work at the hospital, which was where he received his medical care. (Ax. B; Tr. 29)

In June 2009, Applicant was interviewed twice for his security clearance by a Government investigator.⁴ During the first interview, he claimed that some of the delinquent debts reviewed during that interview had been paid. However, during a second interview that month, he reported that he had checked his records and talked his ex-wife (not further specified), and learned that the debts had not been paid. He thought that his ex-wife had agreed to pay them. However, as previously noted, Applicant testified that he assumed responsibility for the debts from each of his previous marriages as part of the divorce arrangements. (Gx. 2; Tr. 50 - 51)

During his first interview in June 2009, Applicant and the investigator reviewed Applicant's current personal finances. At that time, Applicant had not yet remarried and declared only his income. After expenses, which included payments to the IRS and claimed monthly payments to the credit card debts in SOR 1.f, 1.k, and 1.m, it was estimated that Applicant had about \$1,865 remaining each month. (Gx. 2) At hearing, he testified that he and his wife have about \$960 remaining each month after expenses. Applicant also testified that he has missed making the monthly mortgage payment on his house twice since he bought it, but that he is currently in good standing. (Tr. 60 - 61, 66 - 69)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁵ 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,⁶ 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:

⁴ Nothing in the record explains why Applicant was not interviewed until more than three years after he submitted his clearance application.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive. 6.3.

(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.⁷ 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.⁸

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 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.

In support of its case, the Government presented sufficient information to support the allegations in SOR 1.a - 1.s. Applicant's disclosures in his e-QIP, his discussions with Government investigators, and the credit reports obtained during his background

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

investigation attribute the alleged debts and bankruptcies to Applicant. Further, Applicant admitted all but two of the SOR allegations. Available information establishes that Applicant has accrued significant debt since at least 1988, some of which he resolved through his first two bankruptcy petitions. However, his financial problems have recurred even after resorting to bankruptcy. His tax debt arose because he claimed exemptions from withholding so he could have more cash on hand to pay his debts and meet his expenses. Yet he continues to carry a significant amount of debt, particularly to the IRS, that will not likely be resolved in the near future. 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, Applicant blames his financial problems on his divorces, the last of which occurred in 2006, and on a heart attack he suffered two years ago. This information requires 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*). However, I conclude that this does not apply because Applicant did not establish how either event caused him to fall behind on his debts before his heart attack, or how each divorce required him to file for bankruptcy. By his own admission, he filed his first bankruptcy because he was simply overextended. While he testified that he assumed responsibility for the debts from his marriages, he also told an investigator that he thought one of his ex-wives was paying some of the debts listed in his credit history. I can only conclude from the record that the events in question may have exacerbated his financial problems, they did not cause them. Further, Applicant has not taken sufficient action to resolve his debts despite having the means and the time to do so.

None of the other pertinent mitigating conditions apply because Applicant has not demonstrated that his finances will not continue to be of concern in the future. He still carries significant tax debt that will not be resolved for almost 20 years, but which he willingly incurred to have more cash on hand. Applicant has missed two payments on the mortgage for his current home, and he was unable to make payments to resolve his car repossession debt. The fact that he has remarried, and that his wife works and now handles their finances provides little benefit given that each previous marriage resulted in bankruptcy. Finally, Applicant has not sought any professional help to resolve his debts or to improve his own financial practices. On balance, he has failed to mitigate the security concerns about his 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). Applicant is 50 years old and has been steadily employed through at least two jobs at a time for several years. He has suffered personal setbacks through his divorces and his 2008 heart attack. However, his responses to those challenges does not reflect the judgment or reliability

required of one in whom the Government might repose its trust. Further, despite being given additional time to do so, Applicant did not submit information to support some of his claims of debt payment or that might give some insight as to his job performance and overall trustworthiness. Thus, the record does not support application of any of the whole-person adjudicative factors. A fair and commonsense assessment of all of the available information shows that Applicant has not mitigated the security concerns about his financial problems and his overall 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: AGAINST APPLICANT

Subparagraphs 1.a - 1.s: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge