



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



In the matter of:)
)
) ISCR Case No. 09-07107
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

November 15, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon 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 signed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 18, 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 finding that it is clearly consistent with the national interest to grant Applicant's request.¹

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

On May 19, 2010, DOHA issued Applicant a Statement of Reasons (SOR) (Item 1) 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 May 25, 2010. He forwarded an Answer to the SOR, dated June 1, 2010, which was received by DOHA on June 14, 2010. In his Answer to the SOR, Applicant admitted the three SOR allegations. He also requested a decision based on the written record. DOHA Department Counsel issued a file of relevant materials (FORM),² dated August 11, 2010, in support of the Government's preliminary decision to deny Applicant's request for a security clearance. The FORM was forwarded to Applicant on August 12, 2010, and he received it on August 23, 2010. He was given 30 days from the date he received the FORM to respond, but did not submit a response. The case was assigned to me on November 2, 2010, for an administrative decision based on the record.

Findings of Fact

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

Applicant is 35 years old. He married for the first time in 1992, and divorced in 1995. He has been married to his second wife since 1996. He has three children who range from nine to thirteen years of age. He has worked for the same defense contractor since 2002, other than a brief period when he was laid off from January to March 2009. He is a material detail inspector. (Item 5)

In his security interview of July 2009, Applicant explained that his financial problems began because he had been receiving overtime income and was spending based on that extra income. When the overtime was no longer available, he was unable to make his car loan payments. He stated he mismanaged his money and lived beyond what he could afford on his base salary. Applicant has not sought or received financial counseling. (Items 6, 7)

Applicant stated in his interrogatory response of January 2010 that he has sufficient income now to meet his current expenses and debts. The personal financial statement he completed shows a net monthly income of \$2,505 and monthly expenses of \$1,639, leaving \$866. From that amount, he makes four debt payments per month that total \$875. His monthly net remainder is negative \$9.00. (Item 7)

The three SOR debts, which appear in Applicant's credit reports of June 2009 and February 2010, total \$24,471. They represent the remaining balances after three cars were repossessed. (Items 6, 8, 9)

² See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

The status of Applicant's SOR debts follows.

Car loan #1, \$4,442 (allegation 1.a.) – UNPAID. Applicant and his wife purchased a car for \$18,000 in 1998. He paid the loan until about 2006, when he missed two payments. He was unable to make further payments, and asked the creditor to take the car. He believes the \$4,442 debt is the balance after the car was sold. At his security interview in July 2009, he stated he intended to contact the company to arrange to pay the balance. (Items 6, 8, 9)

Car loan #2, \$6,647 (allegation 1.b.) – UNPAID. Applicant and his wife purchased a car in about 2002 or 2003 for \$23,000. In 2006, he fell behind in his payments and asked the creditor to retrieve the car. He believes it was sold, and the debt is for the remaining balance after the sale. He has not been contacted by the creditor. He informed the agent at his security interview in July 2009 that he intended to contact the company and arrange to pay the debt. (Items 6, 8, 9)

Car loan #3, \$13,382 (allegation 1.c.) – UNPAID. In about 1998, Applicant and his wife purchased a car. He made the car payments on time. In about 2003, he realized he no longer needed the car. After receiving “bad advice” from his car dealer, he called the creditor and asked the company to take the car. He was not behind in his payments when the car was repossessed. He did not realize that the remaining balance would be a derogatory entry on his credit report. He believes the \$13,382 is the amount he owed at the time of the repossession. He stated in his security interview of July 2009 that he would contact the creditor about payment arrangements. (Items 6, 9)

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 are followed when 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).

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

³ Directive. 6.3.

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

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 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 evidence contained in the FORM shows that Applicant's delinquencies started in 2003. He stated in his interrogatory response that he is able to meet his current debts, but the information he provided in his personal financial statement does not support his claim, as it shows a negative monthly remainder. His seven-year history of failing to meet his financial obligations 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*).

⁵ See *Egan*, 484 U.S. at 528, 531.

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

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns 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.

Applicant's failure to pay his debts did not occur in the distant past, because the debts are still delinquent. He has not shown that delinquencies are unlikely to recur. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be applied.

Nothing in the file indicates that Applicant's financial situation resulted from circumstances beyond his control. He admits that he made poor financial decisions and lived beyond his means. He did not act responsibly by seeking financial counseling to help resolve his debts. AG ¶ 20 (b) does not apply.

Applicant has not received financial counseling. In January 2010, Applicant told the security investigator that he that he would contact the creditors to make payment arrangements. Despite this statement, the record contains no evidence to show he paid any of the debts alleged in the SOR or made any effort to contact the creditors or establish payment plans to resolve his debts. Mitigation is unavailable under AG 20(c) and AG ¶ 20(d).

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 35 years old and presumed to be a mature, responsible adult. He accrued more than \$24,000 in debt since 2003. In response to the Government's concerns, he offered no evidence to show he has paid any of the SOR debts or initiated a plan to do so. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not demonstrated the good judgment and trustworthiness required in those who protect the Government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the Government.⁷

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.c. | 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

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