



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 09-08350
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Applicant for Security Clearance)

Appearances

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

January 19, 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 granted.

On September 2, 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 a set 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 national

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.

interest to continue Applicant's access to classified information. On July 6, 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 answered the SOR and requested a hearing. The case was assigned to an administrative judge on June 7, 2010. Pursuant to a Notice of Hearing issued on July 1, 2010, a hearing was convened on July 14, 2010. Applicant failed to appear as scheduled.⁴ Department Counsel indicated that she had spoken with Applicant that day, and that Applicant claimed he had not received notice of the hearing. However, Department Counsel also stated that she had spoken with Applicant on June 28, 2010, to inform him that his hearing would be held on July 14, 2010. (Tr. I 4).

On July 15, 2010, Applicant appeared before the Administrative Judge began his other scheduled hearings for that day. A short hearing ensued,⁵ wherein Applicant explained that he had not received the notice of hearing or advance copies of the documents the Government intended to submit in support of its case. (Tr. II 4 - 6) The Administrative Judge continued Applicant's case to an undetermined date. Department Counsel handed Applicant a copy of the Government's exhibits at this hearing. (Tr. II 7 - 8)

The case was transferred to me on August 3, 2010. Pursuant to a Notice of Hearing issued on August 6, 2010, I reconvened the hearing in this matter on August 24, 2010. The parties appeared as scheduled. The Government presented eight exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 8. Applicant testified and submitted four exhibits that were admitted without objection as Applicant Exhibits (Ax.) A - D. DOHA received a transcript (Tr.) of the hearing on September 13, 2010.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed about \$12,561 for 18 unpaid debts (SOR 1.a - 1.r). Applicant admitted only the allegation at SOR 1.e. Applicant's admission is 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 38 years old and is employed by a defense contractor as a logistics manager at a large U.S. military installation. He has held that job since August 2009.

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.

⁴ DOHA received a transcript of that hearing (Tr. I) on July 22, 2010.

⁵ DOHA received a transcript of that hearing (Tr. II) on July 23, 2010.

Since March 2002, Applicant has also worked at that military installation for four other defense contractors. All of his jobs have been in administrative and logistics support positions. Applicant has held a security clearance since September 2004. (Gx. 1)

Applicant and his wife have been married since June 1994. They have two children, ages 4 and 6. Applicant and his wife have also raised a child Applicant had by a different woman before his marriage. That child, whom Applicant still supports, is now 18 and attending a nearby college. His tuition is funded by need-based grants. Applicant also supports two godchildren, both under age 18. (Gx. 1; Tr. 50, 79)

Applicant and his wife have been separated at least seven times during their marriage. The separations have varied in length, but as of the hearing, they had been separated since March 2010 after being together for the previous three years. Each time they separated, they both lived in the same neighborhood and shared custody of the children. Applicant has been the sole source of income for their family since 1997.

In July 2004, Applicant's 6-year-old child was born with only one under-developed kidney and a collapsed lung. This required a six-month hospitalization at a university hospital about an hour from where they lived. Eventually the child's kidney failed, requiring dialysis and other significant care after the child came home. The child has since received a kidney transplant and is much improved. However, Applicant or his wife take the child back to the hospital at least once each month for follow-up examinations. (Gx. 2; Tr. 39 - 40, 56)

While his child was in the hospital, Applicant was given ample time off, but much of his leave was unpaid. At times, he made less than \$900 each month, as opposed to his regular monthly income of at least \$2,200. Medicaid covered most of his child's medical care (Tr. 87 - 88), but the combination of lost income and added expenses of traveling to the hospital for extended stays caused financial problems for Applicant. Applicant currently does not have any medical insurance because he cannot afford the employee contribution required by his employer. (Tr. 89)

When Applicant submitted his e-QIP, he disclosed that a mobile home he and his family lived in was repossessed in March 2007, because he had fallen behind in his payments for lack of sufficient income. (Gx. 1) Subsequently, credit reports obtained during Applicant's background investigation (Gx. 6; Gx. 7) attributed to him individually the delinquent debts alleged in SOR 1.a - 1.r.

In response to the SOR, Applicant admitted only that the debt at SOR 1.e was his. This was a delinquent debt to a credit union for checking fees he accrued after stopping direct deposit of his paychecks. Applicant paid that debt in April 2010. (Ax. A; Tr. 53 - 54) Applicant denied all but one of the remaining allegations in response to the SOR. However, at his hearing he acknowledged that some of the debts alleged were his. The debt at SOR 1.a was for an unpaid utility bill incurred when he vacated the mobile home after it was repossessed. (Tr. 51 - 52) The \$3,170 debt at SOR 1.f is the balance due after repossession of his mobile home. (Tr. 54 - 56) The debt at SOR 1.q is a \$1,604 remainder after resale of a voluntary repossession of a used car he bought in 2004. Applicant claimed it was a lemon that he could not afford to fix. (Tr. 64 - 65)

The \$514 debt alleged at SOR 1.r is a for a local gym membership Applicant cancelled in 2006 when he was given access to a gym at the military installation where he works. Applicant disputes this debt, claiming that he had already completed the one-year contract that he had signed. He has not returned to the local gym to resolve this debt, and he did not present any documentation to support his claimed dispute. (Tr. 86)

The debts alleged at SOR 1.b - 1.d and 1.g are for unpaid medical debts totaling \$609. Applicant denied any knowledge of those debts, but opined that they may be for medical care for his family at various times when he and his wife were separated. (Tr. 53) Additionally, the debts at SOR 1.k, 1.l, 1.n, 1.o, and 1.r, which total \$4,531, are for unpaid credit card or bank accounts. Applicant acknowledged that his wife may have opened these accounts or used his existing credit accounts without his knowledge. When he was not living at their marital residence, he did not receive any bills or overdue notices through the mail. The only bills he would pay were those his wife told him about. (Tr. 49 - 50, 61 - 64)

The debts at SOR 1.h and 1.j total \$377 and are held by a collection agency Applicant does not recognize. The debt at SOR 1.h has been removed from his credit report. (Answer to SOR; Ax. B; Tr. 59 - 60) The debt at SOR 1.m is a \$100 collection account for an insurance company Applicant never used. (Tr. 63) He made the same claim for the debts at SOR 1.i and 1.j, which are collection accounts totaling \$1,211 for a cable television company and a telephone company, respectively, which he says he never used. (Tr. 60 - 61)

In September 2005, Applicant was threatened with eviction from the trailer park where his mobile home sat. In addition to making monthly payments on the note for the trailer itself, he also had to pay \$165 each month to the park for use of their lot. The trailer park obtained a judgment of \$338 against the Applicant for two months of missed lot fees. In October 2005, he paid the park \$300, but a \$338 judgment, which was not alleged in the SOR, still appears on his credit report. (Answer to SOR; Gx. 2)

Aside from the debts at SOR 1.e and 1.h, Applicant has not paid or otherwise resolved any of the listed debts. Applicant testified that he believes some of the listed debts to be the result of identity theft. In support of this theory, he presented a portion of his credit report that shows addresses in a state where neither he nor his wife have lived. Although he was advised to contact authorities in that state to file an identity theft complaint, he has not yet done so. (Ax. B; Tr. 38 - 39, 47 - 48)

In January 2010, Applicant contracted with a credit repair firm to verify or correct the information in his credit history. The firm agreed to file disputes with the credit reporting agencies and have removed from his credit history those entries that are invalid. The agreement (Gx. 8) stated that, they would submit Applicant's disputes after he paid their \$500 in full. Approximately 45 days thereafter, he was to receive an updated credit report showing the results of those disputes.

The April 13, 2010, credit report Applicant submitted with his response to the SOR reflected only the debts alleged at SOR 1.a, 1.b, 1.e, 1.f, and 1.r. An August 23, 2010, credit report (Ax. B) reflected Applicant's payment of the SOR 1.e credit union

debt, and that he currently is in good standing on a \$500 secured loan with that credit union. His credit repair firm advised him to take out and pay that loan as a way to help rebuild his credit. (Tr. 83 - 84) Applicant is also current on payments for a used truck he bought in February 2010. (Tr. 85) Also listed as derogatory accounts are the debts at SOR 1.a, 1.b, 1.f, and 1.r, the \$338 judgment, discussed above, and a delinquent \$694 medical bill incurred in April 2010. Fraud alerts have been placed with all three credit reporting agencies.

A credit report obtained by DOHA adjudicators in April 2010 (Gx. 4) reflected the \$338 lot fee judgment and the allegations at SOR 1.a - 1.f. Fraud alerts were also shown in this report.

When Applicant responded to DOHA interrogatories in February 2009 (Gx. 3), he provided a personal financial statement (PFS). The PFS showed he had less than \$100 remaining each month after expenses. The PFS did not include any payments on past-due debts. Applicant is now supplementing his income, 6% of which is diverted pre-tax to a 401k account, with about \$500 he earns on the side as a barber each month. Applicant now estimates he has between \$150 and \$200 remaining each month. (Tr. 90 - 91)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁶ 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,⁷ 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:

- (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

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive. 6.3.

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.⁸ 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.⁹

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.

Applicant's denials placed on the Government the burden of proving all but one of the SOR allegations.¹⁰ In support of its case, the Government presented sufficient information to support the allegations in SOR 1.a - 1.r. Two credit reports obtained during the background investigation attributed the listed debts to Applicant as individual accounts. However, the April 2010 credit report supports only SOR 1.a - 1.f, totaling \$4,411. Applicant's information shows that he also owes the \$514 debt at SOR 1.r, as well as unalleged debts for a \$338 judgment and an unpaid medical bill incurred in April 2010 for \$694. Aside from the debt alleged at SOR 1.e, available information showed that Applicant had not paid or otherwise resolved any of his past due debts. Thus, 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*). As to AG ¶ 19(a), available information shows that Applicant, who appears to be living from paycheck to paycheck, is unable to pay his debts.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

¹⁰ See Directive, E3.1.14.

By contrast, Applicant established that several of the alleged debts were invalid. Since he hired a credit repair firm, several entries, the validity of which Applicant questioned, have been removed from his credit report. As a result, of the \$12,000 in total debt alleged in the SOR, he paid SOR 1.e, and likely owes \$5,276, or 40% of the total alleged. He also sought professional financial help, and has demonstrated efforts to rebuild his credit and increase his saving. Many of the causes for his financial problems – marital separation and his child's medical needs – were unforeseen circumstances or were beyond his control. Further, Applicant lives within his means. He is current on his truck payments and, aside from a medical debt that was incurred in April 2010 because he lacks medical insurance, he has not incurred any new, unpayable debts through credit cards or other forms of personal credit.

All of the foregoing supports application of the mitigating conditions at AG ¶ 20(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*) and 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*). Application of 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*) is limited by the absence of an actual payment plan. To date, Applicant's efforts have been directed, through the credit repair firm, to cleaning up his credit history.

The record does not support application of the mitigating condition at AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant was interviewed for his clearance in September 2009, but took no action to address his debts until January 2010. By that time, many of his debts had been delinquent for between three and six years.

Applicant disputed many of the debts in his SOR. Credit reports obtained since April 2010 show that, with one exception (SOR 1.r), those debts have been removed from his credit history. The credit reports and Applicant's contract with a credit repair firm are sufficient to support application of AG ¶ 20(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*).

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 38 years old and has been steadily employed at the same military installation, albeit by different employers, since at least 2002. He is presumed to be a mature, responsible adult. This presumption is supported by the fact that he has worked hard to support his family despite his child's serious medical problems and recurring marital discord. Two of the

children he supports are not his. Applicant's financial problems, while serious, are not as extensive as available information first showed. He is now taking long-needed action to verify his obligations. Applicant may be lacking in financial sophistication and an abundance of resources, but through a recent secured loan, diversion of income to his 401K, and his current car payments, he is demonstrating sound financial judgment. It is unlikely that he will experience similar problems in the future. A fair and commonsense assessment of all of the available information shows that Applicant has 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: FOR APPLICANT

Subparagraphs 1.a - 1.r: For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge