



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



In the matter of:)
)
) ISCR Case No. 09-08557
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

November 24, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, 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) on September 9, 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 finding that it is clearly consistent with the national interest to grant Applicant's request.¹ (Item 5).

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

On June 22, 2010, DOHA issued Applicant a Statement of Reasons (SOR) (Items 1, 2) 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 June 25, 2010. He responded on July 14, 2010, and August 7, 2010. (Item 4)² He requested a decision without a hearing.

In his Answer to the SOR, Applicant admitted all of the 15 allegations under Guideline F. DOHA Department Counsel forwarded to Applicant a file of relevant materials (FORM)³ dated September 7, 2010, in support of the government's preliminary decision to deny Applicant's request for a security clearance. He received the file on September 14, 2010. He was given 30 days from the date he received the FORM to file a response, but did not submit one. The case was assigned to me on November 5, 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 30 years old. He married in 2004, and has one six-year-old daughter. The only educational information he provided was that he attended a technical institute for three months in 2007. Between 2002 and 2008, he worked for three years as a collision estimator and three years as a security officer. Since April 2008, he has worked as an alarm monitoring representative. Although Applicant stated during his security interview of October 2009 that unemployment contributed to his delinquencies, he did not list any periods of unemployment on his security clearance application. (Items 5, 6)

The record does not include information on Applicant's current income and expenses. During his security interview, he discussed his debts, which go back to at least 2006. He noted that he intended to pay them, but did not have the resources to pay for anything beyond his family's immediate needs. He explained that the delinquencies stemmed from poor financial management, unemployment, and his expenditures for illegal drugs. Applicant estimated that between January 2002 and January 2006, he used marijuana almost daily, spending about \$50 per week. He also spent approximately \$150 per week on powder cocaine during the same period. He stated at his interview that he no longer uses illegal drugs.⁴ (Items 6, 8)

² Applicant was requested to answer the SOR a second time because he had not indicated whether or not he wished to have a hearing. In fact, he stated in both his July and August responses that he did not wish to have a hearing. (Item 4)

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

⁴ During the same period, Applicant spent about \$18 per month on Vicodin, and the same for Percocet. The interview summary does not specify if these drugs were purchased with or without a doctor's prescription. (Item 6)

The 19 SOR debts total more than \$15,000, which does not include Applicant's illegal drug purchases. The debts appear in Applicant's credit reports of September 25, 2009, and April 20, 2010. In his Answer, Applicant provided no information on the status of these debts. (Items 7, 8)

Utilities – total \$1,663 (allegations 1.a, 1.b., 1.c., 1.e., 1.f., 1.k)

Medical debt - \$78 (allegation 1.j.)

School-related debts - \$13,407 (allegations 1.d., 1.g., 1.h., 1.i. and 1.m.)

Library debt - \$64 (allegation 1.l.)

Illegal drug purchases - (allegation 1.n.)

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.⁵ 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.

A security clearance decision is intended only 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. 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.⁷ 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

⁵ Directive. 6.3.

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

⁷ See *Egan*, 484 U.S. at 528, 531.

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.⁸

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 delinquencies go back to at least 2006. Moreover, he admits that his financial problems stem, in part, from the expense of buying illegal drugs. Based on Applicant’s estimate of his drug use and expenditures between 2002 and 2006, his outlay for marijuana and cocaine totals more than \$10,000 for marijuana and \$31,000 for cocaine. His conduct supports application of the following disqualifying conditions under AG ¶19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

Under AG ¶20, the following relevant conditions can potentially mitigate security concerns:

- (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

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

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; and

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

Applicant's failure to pay his numerous debts did not occur in the distant past, and his conduct is recent, as the debts remain delinquent. He stated he can only pay his current expenses, and therefore, he is not in a financial position such that delinquencies are unlikely to recur. His unresolved financial situation casts doubt on his trustworthiness and reliability, and AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) does not apply because Applicant did not provide evidence of circumstances beyond his control. Although he mentioned unemployment in his interview, he did not list any periods of unemployment since 2002 on his security clearance application. His indebtedness results at least in part from a conscious decision to spend a large portion of his available funds on illegal drugs.

The record does not support a showing that Applicant has made any effort to resolve his past-due debts. There is no evidence that Applicant has paid even small debts, such as the three debts of \$100 or less. 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 has accrued significant debt. In response to the Government's concerns about his financial status, he failed to offer evidence that he has contacted creditors, sought assistance through credit counseling, or taken other steps to resolve his delinquencies. The record contains no documentation to show that he paid any debts, even those under \$100, or that he established a payment plan for any debts. He admits his debts stem in part from the significant amount he spent on illegal drugs.

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 about any Applicant's suitability to hold a security clearance must be resolved in favor of the Government.⁹

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.n.	Against Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge

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