



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 10-00831

Appearances

For Government: Candace Le'i Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

MALONE, Matthew E., Administrative Judge:

Since about October 2000, Applicant has accrued nearly \$42,000 in delinquent debt. When he was interviewed about his debts in 2003 as part of a prior background investigation, he claimed he would start paying off his debts the following month. However, over the past seven years, Applicant has not taken sufficient action to pay or otherwise resolve his debts. Based upon a review of the pleadings and exhibits, Applicant's request for continued eligibility for a security clearance is denied.

On June 6, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for his work as 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 interrogatories¹ to clarify or augment information in the background investigation. After reviewing the results of the background investigation and Applicant's

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to allow Applicant access to classified information. On July 9, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raised security concerns addressed in the adjudicative guidelines³ (AG) under Guideline F (financial considerations).

On August 27, 2010, Applicant responded to the SOR through a notarized statement and requested a decision without a hearing. On November 16, 2010, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the Government's preliminary decision. Applicant received the FORM on December 11, 2010, and was given 30 days to respond. Applicant did not respond and the case was assigned to me on February 1, 2010.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$41,968 for eight delinquent or past-due debts (SOR 1.a - 1.h). Of the alleged debts, SOR 1.b (\$15,262 for a car repossession), SOR 1.d (\$9,385 for a car repossession), and SOR 1.g (\$12,285 for a medical debt) constitute about 88% of Applicant's total unpaid debt. In response to the SOR, Applicant admitted those allegations, as well as SOR 1.f (\$4,237 for a medical debt).

Applicant denied the allegations at SOR 1.a, 1.c, 1.e, and 1.h. In his denials of SOR 1.a (collection account for \$84) and 1.e (\$405 medical debt), Applicant claimed he had paid both debts and provided receipts in support of his SOR response. In denying SOR 1.c (an unpaid medical bill for \$172) and 1.h (an unpaid cell phone bill for \$138), Applicant did not provide any information, but in response to DOHA interrogatories (FORM, Item 8), had averred that he could not verify any information about these debts. In addition to the facts established through Applicant's admissions, I have made the following findings of relevant fact.

Applicant is 36 years old and employed by a defense contractor in a position that requires access to classified information for him to perform his duties. He and his wife, whom he married in March 1993, have three children, ages 18, 15, and 10. Applicant's wife also has one adult child from before their marriage. (FORM, Items 4 and 5)

Applicant served on active duty in the United States Marine Corps (USMC) from April 1993 until October 2000, when he was honorably discharged. In November 2000,

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

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 See Directive, Enclosure 3, Section E3.1.7. The FORM included 14 exhibits (Items 1 - 14) proffered in support of the Government's case.

he affiliated with the USMC Reserve, where he was a drilling inactive reservist until August 2006. (FORM, Item 5) Applicant first received a security clearance in 1993 in connection with his military duties. (Id.) After Applicant was discharged from active duty, he was employed as a test engineer by a temp agency until January 2003. (Id.)

Beginning in February 2002, the USMC began recalling Applicant for periods of active duty to support the war effort in Iraq. Between recalls, he began working in the civilian sector as a test technician in November 2004. Applicant was discharged from the Marine Corps Reserve for medical reasons in August 2006. He had achieved the rank of staff sergeant. In November 2007, Applicant left his test technician job to work for a defense contractor supporting military intelligence training programs. He has held his current job working at an overseas site since January 2009. (Id.)

In January 2003, Applicant submitted a Security Clearance Application (SF 86) to renew his security clearance. In that SF 86, he disclosed two car repossessions resulting in two debts totaling about \$15,000. He also disclosed that he was more than 180 days past due on payments for a \$13,000 consolidation loan, and on payments for an \$18,000 car loan. (FORM, Item 6) A credit report obtained as part of the ensuing background investigation attributed to Applicant 12 delinquent or past-due debts totaling approximately \$58,104. (FORM, Item 15)

In July 2003, Applicant was interviewed by a Government investigator about his finances. In the interview, Applicant said his financial problems started when he left the USMC in October 2000. He and his wife had not managed their finances properly and the reduction in income after he was discharged left them unable to meet all of their financial obligations. Applicant averred that he would start paying or otherwise resolving his debts in August 2003. He also provided a personal financial statement (PFS) that showed he had about \$1,100 remaining each month after all of his expenses, including claimed monthly payments to ten past-due accounts. (FORM, Item 14)

In July 2005, Applicant submitted another Security Clearance Application (SF 86). He again disclosed two car repossessions totaling about \$15,000. He also disclosed the delinquent \$13,000 consolidation loan, but did not disclose the delinquent \$18,000 car loan that was listed on his 2003 SF 86. (FORM, Item 5) A credit report obtained in August 2005 showed that Applicant owed approximately \$38,891 for nine delinquent or past-due debts. (FORM, Item 13)

In June 2009, after Applicant submitted his e-QIP, a credit report was obtained, which showed that he owed about \$59,634 for 16 delinquent or past-due debts. The report also showed that Applicant was at least 120 days past due on both mortgages on his home totaling \$482,032, and that he had six student loans in deferment totaling about \$24,000. (FORM, Item 12)

Applicant disclosed in his e-QIP that his home mortgages were foreclosed. He also disclosed three car repossessions. (FORM, Item 4) In disclosing his financial delinquencies in his e-QIP, Applicant explained that his debts arose due to unemployment. In Section 13A (Employment / Unemployment Information), Applicant did not list any periods of unemployment. (Id.)

Applicant was interviewed about his finances by a Government investigator in December 2009. He agreed that the debts listed in his credit report were accurate. He repeated his claim that his financial problems began while he was in the military. He also placed some of the blame for his financial problems on his wife's inability to manage money, and he claimed that he had taken control of their finances to resolve their debts. He again stated that he intended to pay his debts. (FORM, Item 7) In his SOR response, Applicant claimed that his debts will be paid off by the middle of 2011, but he has not yet provided any information that would show how he plans to do so. (FORM, Item 3)

In response to DOHA interrogatories in May 2010, Applicant submitted an updated PFS. It showed that he has about \$6,000 remaining each month after paying all of his expenses. However, he did not include repayment of any of his debts with his expenses. (FORM, Item 8)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy 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 determinative of 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.

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 prove

⁵ Directive. 6.3.

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

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 to classified information in favor of the Government.⁸

Analysis

Financial Considerations

The Government presented sufficient information in the FORM to support the allegations in the SOR. Applicant has experienced significant financial problems since at least October 2000. Available information shows that he still owes at least \$40,000 for unpaid medical debts, and at least two car repossessions. Despite an earlier investigation about his unpaid debts in 2003, Applicant has not acted to pay or otherwise resolve his debts. Further, Applicant has lost a home to foreclosure, and he has yet to begin paying several student loans currently in deferral. Available information raises a security concern expressed at AG ¶ 18 as follows:

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. 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.

More specifically, the record requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), AG ¶ 19(c) (*a history of not meeting financial obligations*), and AG ¶ 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*).

⁷ See *Egan*, 484 U.S. at 528, 531.

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

Applicant has the means to repay his debts, and he is credited with repaying the debts at SOR 1.a and 1.e. However, he did not submit any information showing that he has begun addressing his other, more significant debts. Along with his admission of the largest of his debts (SOR 1.b), Applicant submitted a copy of a notice regarding a class-action lawsuit against that creditor. The notice shows that Applicant may be part of a class of consumer plaintiffs whose obligations to pay deficiencies after car repossessions would be eliminated through remedies sought from the defendant creditor. Applicant expects the outcome of the suit will eliminate Applicant's liability for the \$15,262 debt attributed to him from a car repossession. However, he did not submit information about when the suit was filed, when it would be resolved, or other indication of the likelihood of success in obtaining the proposed remedies. It would be speculative, at best, to conclude that Applicant is no longer liable for this debt.

More to the point, Applicant has not demonstrated that he has improved his personal financial management practices so that he will not be a security risk in the future. Despite having significant cash on hand each month after expenses, he has not established a repayment plan or provided information showing he is negotiating with his creditors to resolve his obligations. Nor did he support his claims regarding the causes (unemployment, his wife's actions, etc.) of his debts. By contrast, available information shows that Applicant did not manage his money during his first USMC tour of duty, and that he has not done anything since 2000 to resolve his financial problems. Granted, he has paid two of his smaller delinquencies. But there is no indication that he is willing to enter into any organized arrangements with his other creditors to resolve their claims against him. Finally, with the advent of his student loan obligations, his financial obligations will only increase absent any action to resolve his past debts.

On balance, the record does not support application of any of the mitigating conditions listed under AG ¶ 20. Applicant has not mitigated 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 36 years old and presumed to be a mature, responsible adult. He served his country in the USMC active and reserve components. He is also employed in direct support of the military overseas. However, there is no other information that supports any of the whole-person factors at AG ¶ 2(a). His financial problems are ongoing, and there is little indication that they will abate anytime soon. A fair and commonsense assessment⁹ of all available information shows about Applicant's finances sustains the doubts about Applicant's suitability for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the national interest.¹⁰

⁹ See footnote 5, *supra*.

¹⁰ See footnote 8, *supra*.

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.e:	For Applicant
Subparagraphs 1.b - 1.d, 1.f - 1.h:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge