



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 10-01575
)	
Applicant for Security Clearance)	

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: Richard Morris, Esquire

June 29, 2011

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has experienced significant financial problems and delinquencies since at least 1997. Those problems worsened in 2007 due, in part, to circumstances beyond his control. However, he did not establish that he acted responsibly or that his finances have improved so that he will not incur more delinquencies in the future. Based on a review of the pleadings, exhibits, and transcript, Applicant’s request for a security clearance is denied.

Statement of the Case

After reviewing the results of the Applicant’s background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories¹ to clarify or augment information obtained in his background investigation. Based on all available information, including Applicant’s responses to the

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

interrogatories, DOHA adjudicators could not make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant or continue Applicant's access to classified information. On August 25, 2010, 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 December 6, 2010, and a hearing was set for January 18, 2011. However, on January 12, 2011, the administrative judge granted Applicant's request for a continuance. The case was transferred to me on February 3, 2011. Pursuant to a Notice of Hearing issued on February 16, 2011, I convened a hearing in this matter on March 30, 2011. The parties appeared as scheduled. DOHA received a transcript (Tr.) of the hearing on April 7, 2011. The Government presented nine exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 9. Applicant testified and submitted two exhibits that were admitted without objection as Applicant Exhibits (Ax.) A and B. Additionally, I left the record open after the hearing so that Applicant could submit additional relevant information. (Tr. 102) Applicant's timely post-hearing submission has been admitted into the record without objection as Ax. C.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$80,966 for 29 delinquent debts (SOR 1.a - 1.cc). Applicant admitted, with explanation, all of the SOR allegations.⁴ Applicant's admissions are incorporated in my findings of fact. Having also reviewed the transcript and exhibits, I make the following additional findings of relevant fact.

Applicant is 31 years old and works as a senior welder for a defense contractor in support of Navy maintenance and repair programs. He has worked for his employer since June 2001. For three months in 2004, he also worked as a welder for a private shipyard. Applicant served in the U. S. Navy from January 1990 until he was honorably discharged in June 2001 as a Boiler Technician Second Class (BT2; E-5). He has held a security clearance since he enlisted in the Navy. He held that clearance without incident until his employer reported a garnishment against Applicant's wages in 2009 for the debt alleged at SOR 1.a. (Tr. 12 - 13)

Applicant and his wife have been married since December 1991. They have two children, ages 17 and 15. Applicant also has a third child, age 25, from before the

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 In his Answer, Applicant omitted his response to SOR 1.i. At the hearing, he entered an admission to that allegation. (Tr. 9 - 10)

marriage. Applicant's wife has a chronic medical condition that has prevented her from working since about 2007. (Gx. 3; Gx. 4; Tr. 36) Applicant enjoys a solid reputation at work. He is very good at his job and works long hours of overtime whenever he can. Applicant also works a second job delivering pizza to earn extra money. (Ax. A; Tr. 64)

On September 13, 2005, Applicant submitted a security clearance application (SF 86). He responded "yes" to SF 86 questions 34 (wage garnishment), 35 (repossessions), 37 (unpaid judgments), 38 (debts greater than 180 days past-due in the past 7 years), and 39 (debts currently more than 90 days past-due), and disclosed nine delinquent debts totaling \$12,751. (Gx. 1) A credit report obtained on September 26, 2005, showed that Applicant had incurred debts of \$6,738 for four civil judgments, but that he had paid three of them, leaving a single unpaid judgment of \$676. The report also showed that Applicant owed \$2,403 for six collection accounts, \$24,619 for seven delinquent or past-due debts, and that he was at least 30 days past-due on his mortgage. (Gx. 8)

Applicant was interviewed about his debts by a Government investigator on June 28, 2006. He stated at that time that he was working to repay his debts and intended to resolve his financial problems. It appears that his security clearance was renewed based on the ensuing background investigation. (Gx. 4)

On December 16, 2009, Applicant was interviewed by a Government investigator, who reviewed with Applicant a credit report obtained on October 7, 2009. That report showed that Applicant had five unsatisfied judgments totaling \$16,339, and that he owed \$2,135 for six collection accounts. The report also showed that Applicant owed \$2,990 for three delinquent accounts. (Gx. 7) In the interview, Applicant stated that 25% of his pay was being garnished to satisfy the debt at SOR 1.a, which arose when he had to finance funeral services for his father-in-law in 2007. Applicant stated that, as a result, he has been unable to keep up with his mortgage, while still paying other debts. However, a review of his monthly finances during the interview showed Applicant had about \$1,200 remaining each month after expenses, which included less than \$200 in debt payments. (Gx. 4)

Complicating Applicant's finances in 2007 was his wife's arrest and conviction on federal credit card fraud charges. Applicant had to pay legal fees for his wife's defense. After she was convicted and sentenced to five months in jail, some of Applicant's income, which is their sole means of support because of his wife's illness, was diverted to making court-ordered restitution. She still owes about \$11,000. (Tr. 46 - 49) Applicant also had to pay legal fees when his wife was sued by her mother around the time she was charged with fraud. Applicant and his wife were advised to settle the suit in light of her pending criminal charges. The resulting civil judgment requires Applicant's wife to pay \$26,500. Although Applicant listed this debt as his in an attachment to his response to DOHA interrogatories (Gx. 3), none of the credit reports obtained by the Government attributes this debt (alleged at SOR 1.n) to Applicant. However, he has taken responsibility for this debt, as well as for his wife's restitution obligation, because he loves his wife. (Tr. 68 - 69)

Also in 2007, Applicant's taxes were audited by the Internal Revenue Service (IRS). It was determined that he owed approximately \$16,000, including interest and penalties, for disallowed deductions of work-related expenses from a prior tax year. Applicant averred that this debt was satisfied. There is no documentation in the record to verify this debt. (Gx. 3; Tr. 34, 63 - 64)

Applicant paid most of his wife's legal fees by refinancing the mortgage on his house. However, because of his poor financial record, he had to pay a 13.5% interest rate. After his pay was garnished for the debt at SOR 1.a, he was unable to keep up with the mortgage payments, and the house was lost to foreclosure in March 2010. (Tr. 43 - 47)

For most of their marriage, Applicant's wife has managed their finances. While Applicant was in the Navy, he was assigned to three different ships, deployed at least three times for six months or more, and was at sea for other extended periods until 1996. For that reason, they found it easier for her to pay the bills and manage their money. From 1996 until 2000, however, Applicant was assigned to shore duty posts, yet his wife still managed their finances. Between 1993 and 2008, Applicant and his wife incurred at least 14 delinquent debts that have been enforced through civil judgments. Eight of those debts were incurred before 2006, when Applicant averred that his financial problems started. (Gx. 9) Since leaving the Navy, Applicant continued to let his wife manage their money because he sometimes worked two jobs, worked seven days a week for the overtime pay, or was temporarily assigned to locations away from home. Since responding to the SOR, Applicant is more involved with the management of the household finances. (Tr. 89 - 91, 61, 65 - 66)

To try and resolve their financial problems, Applicant's wife testified that they received personal financial management counseling from the Consumer Credit Counseling Service (CCCS) in their area. (Tr. 63 - 65) Both Applicant and his wife stated that they have learned and implemented better money management practices. However, they did not provide any documentation of their CCCS counseling or their current finances.

Applicant stated in his 2009 subject interview that he and his wife intended to file for Chapter 13 bankruptcy protection. In 2010, they also consulted a bankruptcy attorney; however, that person died. On April 1, 2011, Applicant and his wife retained another bankruptcy attorney and had begun the process of filing a petition. (Tr. 69, 76 - 77, 95 - 96; Ax. C) Applicant and his wife had previously filed a Chapter 13 petition in 1997. (Tr. 95)

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

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

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:

- (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 Considerations

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

⁶ Directive. 6.3.

⁷ See *Egan*, 484 U.S. at 528, 531.

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

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.

The Government's information, as well as Applicant's SF 86 disclosures, and his admissions, and testimony support the SOR allegations that Applicant owed more than \$80,000 for 26 delinquent or past-due debts. The record also established that Applicant has experienced severe financial trouble since about 1997, when he filed a bankruptcy petition. He is currently in the process of filing another bankruptcy petition, and his financial history is characterized by a series of delinquent debts being enforced through civil judgments. Available information 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*).

By contrast, the record shows that in 2007, Applicant experienced unforeseen challenges to his finances that either added to his debt or hindered his ability to repay previous debts. His wife's debt from a lawsuit by her mother, the expenses of his father-in-law's funeral, an IRS audit, his wife's criminal conviction, and his wife's inability to work due to illness all require 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*). To benefit the Applicant, he must show that he acted responsibly under the circumstances. Although he and his wife claimed they used CCCS and paid some of their debts, they did not document their claims. Additionally, Applicant is in the process of seeking bankruptcy protection from his creditors. Although this is a legitimate action, and might be the most prudent option for Applicant, he has used bankruptcy in the past, yet continued to amass significant debts and delinquencies thereafter. This mitigating condition does not apply.

The mitigating condition 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*) does not apply because of Applicant's extensive history of financial problems even before the events of 2007. Since 1997, he and his wife have been unable or unwilling to manage their finances to be able to better respond to financial challenges and to exert some control over their affairs. Also, his wife's restitution obligations and the judgment obtained against her by her mother will continue to impede their financial well-being.

The mitigating conditions at 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*) and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) are not applicable because there is no documentation of Applicant's CCCS counseling or record of their claimed debt payments. It may be that Applicant will successfully resolve his debts through bankruptcy. But given his prior bankruptcy and extensive history of delinquencies, Applicant must establish a reliable track record of financial health before he can

overcome the adverse inferences from his poor financial history. Because this record does not contain such a track record, he has not mitigated the security concerns raised.

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 31 years old, and has a good work record and reputation at his company. He is a responsible father and husband who served his country honorably in the Navy. He has accepted onerous financial responsibilities, some of which are not of his own making. Nonetheless, the adverse information about his finances, despite the sometimes unusual circumstances surrounding them, presents an unacceptable risk to the Government's interest in protecting sensitive and classified information. Were the events of 2007 the only cause of his financial difficulties, there might be less cause for concern. However, Applicant was already having financial problems for most of the preceding decade. He has not shown that those problems will not continue or recur in the future. A fair and commonsense assessment of all of the available information shows that reasonable doubts remain about Applicant's finances. Those doubts, in turn, reflect poorly on his ability or willingness to protect the national interest as his own, and must be resolved against continuing Applicant's 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.cc:	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. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge