



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 10-06180
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

August 24, 2011

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by adverse information about his finances. Although he accrued significant unpaid credit card debt through poor decisions about the financing of his post-graduate studies, he has paid or resolved all but one of the debts alleged in the SOR. His current finances are sound and his financial problems are unlikely to recur. Based upon a review of the pleadings, exhibits, and transcript, Applicant’s request for a security clearance is granted.

Statement of the Case

On March 17, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew 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 interrogatories¹ to clarify or augment information obtained in his background investigation. Based on the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators could not make a preliminary affirmative finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On March 28, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guideline (AG)³ for financial considerations (Guideline F).

On May 12, 2011, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on June 23, 2011. Pursuant to a Notice of Hearing issued the next day, I convened a hearing on July 13, 2011. The parties appeared as scheduled. The Government presented five exhibits identified as Government Exhibits (Gx.) 1 - 5, all of which were admitted into the record.⁴ Applicant testified and proffered one exhibit, a post-hearing submission admitted without objection as Applicant Exhibit (Ax.) A. DOHA received a transcript (Tr.) of the hearing on July 20, 2011.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$35,986 for seven delinquent debts (SOR 1.a - 1.g). Applicant denied all of the allegations and presented information with his Answer that established he had resolved the \$13,059 judgment debt alleged at SOR 1.f. (Tr. 15) Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of fact.

Applicant is 50 years old and is employed by a defense contractor in a position that requires him to have a security clearance. He has worked for his current employer since June 2004. (Gx. 1) From December 1983 until May 2004, Applicant served on active duty in the U.S. Air Force as a precision measurement equipment laboratory specialist. (Tr. 88) He held a security clearance for most of his military career and retired with an honorable discharge as a Master Sergeant.

Applicant has been married twice. His first marriage began in August 1981 and ended by divorce in March 1988. He has been married to his current wife since November 1991. They have two children, ages 22 and 20. (Gx. 1; Tr. 16) Applicant is in his second year of studies for a doctoral degree in clinical psychology. (Tr. 12)

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.

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 I admitted Gx. 4 over Applicant's objection. (Tr. 33 - 34)

Around the time Applicant retired from the Air Force, his son developed medical problems that required significant treatment and at least one surgery. Most of the child's treatment was covered by medical insurance, but Applicant still had to pay "a couple of thousand dollars" (Tr. 81) of his own money for medical bills. To care for their son, Applicant's wife lost time at work, which reduced the income she earned as a dialysis technician. Around the same time, Applicant incurred significant veterinarian's bills to treat a family pet. (Answer; Tr. 17) Concurrently, Applicant was financing tuition, books, and fees for his master's degree in clinical psychology through credit cards. He was able to stay current on his credit card payments until he incurred his son's medical bills and the veterinarian's bills. More recently, his ability to pay his debts has been reduced by the need to also pay college tuition for both of his sons at the same time. Applicant acknowledged, in hindsight, that he should have used student loans to finance his master's degree. When he began to fall behind on his credit card payments, the creditors raised their interest rates, which made it even harder for him to pay his debts. (Tr. 42, 70 - 73)

Applicant is financing his doctoral studies through student loans. He also will receive a 33% tuition reimbursement through the GI bill that will lower the overall total of his student loan obligation after he has completed his studies. He estimates that the total cost of his doctoral education will be about \$100,000 before the GI Bill contribution. (Tr. 67 - 68, 86 - 88)

A credit report obtained by the Government as part of Applicant's current background investigation revealed that Applicant owed \$40,116 for four civil judgments against him. It also showed that he owed \$58,562 for seven accounts that were referred to collection agencies. (Gx. 4) Applicant was asked about his debts when he was interviewed by an investigator on April 7, 2010. He told the investigator that he had paid or settled several of the listed debts and that he was making significant monthly payments on two other debts. Applicant had no knowledge of two medical debts for \$36 each, which are alleged at SOR 1.c and 1.d. (Gx. 2)

Applicant and the investigator also reviewed Applicant's finances at the time of the April 2010 interview. After expenses, including debt payments, it was estimated that Applicant and his wife had about \$4,000 remaining each month based on a combined monthly income of about \$8,033. (Gx. 2) Applicant's expenses are higher because of college tuition for his sons. He now estimates he has at least \$1,000 remaining each month after expenses. (Tr. 72)

A credit report obtained by a DOHA adjudicator in March 2011 reflected only those debts listed in the SOR. The three debts at SOR 1.e - 1.g comprise 99% of the \$35,986 total debt alleged. Applicant has paid the \$13,059 debt alleged at SOR 1.f (Answer). He had intended to negotiate an agreement to pay about \$200 each month for the \$4,575 civil judgment debt at SOR 1.e (Tr. 98); however, the law firm that was handling that account advised Applicant that the case was closed. Applicant has filed a dispute through one of the major credit reporting agencies. (Ax. A)

Applicant has paid the debts at SOR 1.a and 1.b, both of which pertain to a cable television account he once had. (Ax. A; Tr. 19, 40 - 41, 49 - 50) Applicant does not

necessarily dispute that he owes a past-due amount to a credit card company as alleged in SOR 1.g. However, he does not agree that he owes the listed balance of \$18,050. He further contends that the amount listed is the result of interest accrued after the credit card company arbitrarily raised his interest rates. Applicant did not provide any documentation of a dispute or show that he has inquired of the creditor about verifying the debt. It remains unresolved. As to the two \$36 medical bills alleged at SOR 1.c and 1.d, he is willing to pay those debts but does not know who the creditor is. (Tr. 52 - 53)

Applicant acknowledged that he relied too much on personal credit to finance his education and to pay for expenses. He further acknowledged that when faced with unforeseen expenses for his son and a family pet, he quickly became unable to pay his debts as required. Applicant also averred that he has improved his credit recently through financing a car purchase and refinancing the mortgage on his house. (Answer; Tr. 41 - 43)

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 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 its preliminary decision to deny or revoke an applicant's security

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

⁶ Directive, 6.3.

clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR.⁷ 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.

The Government's information supported all of the SOR allegations. It was established that Applicant accrued significant credit card debt that he was unable to pay when unforeseen events placed demands on his finances. Available information shows that Applicant still owes the debt at SOR 1.g, which constitutes 50% of the \$35,986 total debt alleged. The Government's information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*). Accordingly, the burden shifted to Applicant to mitigate or refute the Government's information.¹⁰

Applicant's testimony about his son's medical treatment and other unforeseen events requires 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*). However, this factor is weakened by the fact that those events occurred about eight years ago. Further, they exacerbated a pre-existing condition in the form of Applicant's

⁷ Directive, E3.1.14

⁸ See *Egan*, 484 U.S. at 528, 531.

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

¹⁰ Directive, E3.1.15.

overuse of credit cards at the time. Any financial margin for error was quickly erased when he had to pay for unforeseen expenses. This mitigating condition does not apply.

Applicant also disputed the balance due on the debt at SOR 1.g, thus requiring consideration of the mitigating condition at 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*). However, he did not present any information to support his claim as to SOR 1.g or to show that he has tried to correct the information in his credit history. Applicant also presented information that suggests the debt at SOR 1.e is no longer valid. AG ¶ 20(e) applies, but only to SOR 1.e.

Available information showed that Applicant resolved, or has been paying, other debts not alleged in the SOR since at least the time of his subject interview in April 2010. He has also paid the debts at SOR 1.a, 1.b, and 1.f. The debts at SOR 1.c and 1.d are minor and it is not clear to whom they are owed. The mitigating conditions at AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) and 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*) apply.

Applicant's current finances are sound and he is meeting all of his current obligations. There is no indication that he has accrued new debt that he will not be able to pay. His sons will soon be out of college and Applicant is receiving assistance with the costs of his doctoral studies through the GI Bill. His ongoing debt to the creditor in SOR 1.g is significant. However, it is not required that Applicant be debt free. When viewed together with Applicant's earlier actions to resolve other debts, the reduction by half of the total indebtedness alleged in the SOR, a record of positive cash flow over the past few years, and the absence of newly accrued delinquencies, Applicant's remaining debt does not pose an unacceptable security risk. He has mitigated the security concerns under this guideline.

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 50 years old, has been married for 22 years and is the father of two college-age children. He served for 20 years in the Air Force, held a security clearance without incident for his entire career, and is currently working to advance himself through a doctoral program. Applicant acknowledged that he made poor financial decisions that caused him to default on several obligations not long after retiring from the military. However, he has taken action to pay or resolve several of those debts. His current finances, including his decision making regarding the use of credit, has changed for the better. A fair and commonsense assessment of this record shows that Applicant is not likely to experience similar financial problems in the future, and that his current judgment and reliability are not adversely affected by his past mistakes.

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

Subparagraph 1.a - 1.g: For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge