



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 10-07682
)
)
 Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

07/31/2012

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial problems. His request for a security clearance is denied.

Statement of the Case

On May 4, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to renew a security clearance he holds for his work 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 finding¹ that it is clearly consistent with the national interest to continue Applicant's access to classified information. Subsequently, DOHA issued to Applicant an undated² Statement of Reasons (SOR)

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

² A transmittal letter shows the SOR was sent by DOHA on March 19, 2012, and received by Applicant on March 23, 2012.

alleging facts which raise security concerns addressed in the adjudicative guideline (AG)³ for financial considerations (Guideline F).

Applicant answered the SOR (Answer) on April 9, 2012, and requested a hearing. Pursuant to a Notice of Hearing issued on June 11, 2012, I convened a hearing in this matter on June 26, 2012. The parties appeared as scheduled. The Government presented Government's Exhibits (Gx.) 1 - 6, which were admitted without objection. Applicant testified in his own behalf. DOHA received a transcript (Tr.) of the hearing on June 28, 2012. I also left the record open to receive additional information from the Applicant. However, he made no post-hearing submission, and the record closed on July 13, 2012.

Findings of Fact

In the SOR, the Government alleged, under Guideline F, that Applicant owed \$55,419 for 23 past-due debts (SOR 1.a - 1.w). Applicant denied the allegation at SOR 1.h and admitted the rest. Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 43 years old and employed by a defense contractor in a position that requires a security clearance. He was hired by his current employer in June 2005. Prior to that, he held a series of jobs in retail and other industries that did not require a security clearance. Applicant holds a clearance he first received when he was hired for his current defense contractor position. He also held a security clearance while serving in the U.S. Navy from July 1988 until August 1996. (Gx. 1)

Applicant has been married since August 1990, but he and his wife have been separated since September 1996. They have one child, age 21. A divorce petition was filed sometime after they separated, but it was dismissed with leave to refile. But neither Applicant nor his estranged wife have gotten around to doing so. (Gx. 1; Gx. 4; Tr. 36, 64 - 65)

Applicant also has three other children by two women. Two children, born in 1996 and 1998, live with Applicant. The third child, born in 2003, lives with her mother, to whom Applicant pays \$300 in child support each month. The mother of Applicant's two teenage children was in the Navy when she and Applicant were together. Until her discharge in November 2008, she paid about \$800 directly from her Navy pay to Applicant for support of their children. After she was discharged, those payments stopped. Applicant has not contacted the children's mother about past-due child support payments. (Gx. 4; Tr. 26, 36, 62 - 64)

Applicant attributes the start of his financial problems to the end of the \$800 child support payments, and to a 2009 medical problem that caused him to be out of work for

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).

about 40 days. He received disability payments of about \$220 each week during that time, but he still fell behind in payments to several accounts. The largest debt he incurred in 2009 was for a vehicle repossession that summer. The lender of the car loan for that vehicle obtained a civil judgment against Applicant for the balance of the loan, and Applicant's pay has been garnished for \$800 each month since 2009 to satisfy a \$15,000 debt, which is alleged at SOR 1.g. Applicant claims he should not owe that much because the vehicle should have been resold and it was still worth most of what he borrowed to purchase it. He did not present any information to support his dispute. (Gx. 1; Gx. 4; Tr. 27 - 29)

Applicant denied the debt alleged at SOR 1.h. He averred that the account, a delinquent credit card for \$1,190, was settled. However, at the hearing, he disclosed that the debt was paid off through a wage garnishment that occurred before his pay was garnished to satisfy the car repossession, discussed above. (Answer; Tr. 29 - 30, 61)

Applicant lived with the mother of his youngest child until 2008. When they broke up, he moved out of the mobile home they lived in. Applicant claimed that the debt at SOR 1.u was the result of this person abusing Applicant's credit card and transferring her credit card balances to his. She left in 2010, and the home became Applicant's responsibility. Applicant was able to make payments on the loan that financed the purchase of the mobile home until late 2011. It was repossessed earlier this year and Applicant expects to be obligated to pay for the balance after resale. He does not yet know how much that will be. (Tr. 52 - 56)

Applicant enlisted the services of a credit repair and debt repayment firm in 2010. He paid them about \$500 each month for several months before he realized that none of his debts were actually being repaid. In late 2011, Applicant consulted with a bankruptcy attorney, but he has not retained counsel and no petitions have been filed. (Tr. 32, 42 - 43, 66 - 68)

Applicant claimed he is able to pay his current obligations, but acknowledged that he is living paycheck-to-paycheck. A personal financial statement he submitted to DOHA adjudicators in January 2012 showed that he had about \$131 remaining each month after expenses. He did not list any debt payments as expenses, and he disclosed at the hearing that his rent has recently doubled, and that his income is less than it was in January 2012. (Gx. 5; Tr. 32, 49 - 52)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent⁴ with the national interest 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

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

material information,⁵ 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.⁶

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.⁷

Analysis

Financial Considerations.

The Government presented information that showed Applicant has experienced significant financial problems since at least 2009. He accrued at least 23 delinquent debts totaling more than \$55,000. Two of the debts are being addressed, albeit by involuntary wage garnishments. Four of Applicant’s debts are for less than \$100 each, yet Applicant has not made any effort to pay them. Applicant’s income is not sufficient to

⁵ Directive. 6.3.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

meet his current obligations, and he offered no information to show that his prospects will improve in the near future. This information raises a security concern about Applicant's finances addressed, in relevant part, 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.

More specifically, 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*).

Applicant averred that his financial problems began in 2009 and 2010, when the mother of two of his children stopped paying \$800 each month for child support, and when he lost time from work for medical reasons. However, he did not present any information to show that he acted reasonably in response to unforeseen circumstances. Applicant also engaged a financial repair and debt repayment firm to help resolve his debts. However, the firm did nothing to help him. He has since consulted with a bankruptcy attorney, but no tangible steps have been taken to file a petition or to otherwise resolve his debts.

Applicant acknowledged at the hearing that his monthly finances are getting worse, and he did not offer any information to show that he has a plan to resolve his debts. Based on all of the foregoing, I conclude there is no basis in the available information on which to base application of any of the mitigating conditions listed at AG ¶ 20. Applicant has not mitigated the security concerns about his poor financial record.

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). I have taken into account Applicant's Navy service and the fact that he has been gainfully employed for most of the past 20 years. However, the positive information in this case does not outweigh the significant adverse information about Applicant's finances. A fair and commonsense assessment of all available information shows that doubts remain about Applicant's suitability for clearance. Because protection of the national interest is of paramount importance in these adjudications, those doubts must be resolved against the individual.

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.w: Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge