



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



In the matter of:)
)
) ISCR Case No. 10-07712
)
Applicant for Security Clearance)

Appearances

For Government: Philip Katauskas, Esquire, Department Counsel

For Applicant: *Pro se*

November 30, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that 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

After reviewing the results of Applicant's 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 for a security clearance. On May 18, 2011, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision:

security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).¹

In his Answer to the SOR, dated July 8, 2011, Applicant denied three of the eight SOR allegations. He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 27, 2011, and I received the case on August 4, 2011. DOHA issued a Notice of Hearing on August 25, 2011. I convened the hearing as scheduled on September 13, 2011.

During the hearing, the Government offered five exhibits, which I admitted as Government Exhibit (GE) 1 through 5. Applicant testified, and offered eight exhibits, which I admitted as Applicant's Exhibit (AE) A through I. I held the record open after the hearing to allow Applicant to submit additional documentation, which he timely submitted. I admitted seven documents as AE J through P.² The transcript was received on September 19, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is a 37-year-old high school graduate. He married in 2002, and divorced in 2005. His three children range in age from 7 to 12, and live with his ex-wife. Applicant has worked for his current employer, a defense contractor, since 1997. His position is supply technician/message carrier. (GE 1; Tr. 9-10)

During his marriage, Applicant's ex-wife worked as a receptionist. They shared responsibility for the bills, and they were financially stable. After his divorce in 2005, he lost his spouse's income stream, and testified that, "I mean, the majority of the stuff I was stuck with." Most of his debts became delinquent between 2007 and 2010. After his divorce, he also became responsible for child support. In his testimony, and his February 2011 Personal Financial Statement (PFS), he stated he pays about \$1,001 in monthly child support for his three children. However, his pay statement of May 2011 shows a \$162.50 biweekly deduction for child support, or about \$325 per

¹ Adjudication of this case is controlled by Executive Order 10865, as amended; DoD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines (AG), which supersede the guidelines listed in Enclosure 2 to the Directive. The AG apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

² Some of the documents Applicant submitted were combined for administrative convenience. One set of receipts was submitted twice, except for one additional receipt. I admitted the set of receipts as AE L and the additional receipt as AE M.

month. He testified that the payment comes from his pay automatically, and he is not aware when it changes. The record provides no explanation for the discrepancy. (GE 3; AE I; Tr. 61-66, 76)

In the past, Applicant had taken out personal loans to help pay bills. He also does odd jobs, such as mowing and cutting hair. More recently, Applicant contacted a credit counseling agency in September 2011 to help him resolve his debts. The company provided financial counseling. He signed an agreement to pay \$343 per month toward the payment of four SOR debts (allegations 1.a, 1.b, 1.c, and 1.d). He provided evidence of his first payment. He also testified that he intends to pay the other two SOR debts (allegations 1.e and 1.h). (AE A, B, F, J, K, L; Tr. 31-32, 41, 66, 68)

Applicant's gross annual pay is approximately \$45,000. After taxes and deductions, his net monthly take-home pay is \$1,480. He testified that the information in his budget prepared by the credit counseling company in September 2011 is accurate. It shows Applicant pays out \$1,220 in monthly expenses, plus a \$99 payment on a bank loan, for total monthly expenses of \$1,319. It also lists Applicant's net monthly income as \$1,258.70. The counseling company determined that Applicant's monthly Debt Management Plan (DMP) payment would result in a negative cash flow of \$405. However, Applicant's net income based on his pay statement is \$1,480. In addition, Applicant recently finished paying off a \$1,000 personal loan,³ which would leave him with \$177 in additional funds per month. Using these two numbers, Applicant would have a \$93 negative monthly remainder after paying the DMP. (GE 3; AE C, I, J, K, P; Tr. 56- 60, 67-68, 72-74, 76)

The SOR debts total \$52,726. However, the SOR contained one duplication (see allegation 1.f, below); without it, the SOR totals \$40,330. Another debt appears to be listed in error (allegation 1.g; see below). When it is deducted, the SOR total is \$8,330. Of this amount, \$7,452 is included in Applicant's DMP. The following debts appear in his credit bureau reports of February 2010, February 2011, and May 2011. (GE 4, 5; AE C)

MEDICAL

1a, 1b, 1c, 1h (totaling \$764) – These debts range from \$95 to \$270, and relate primarily to co-pays for doctor's visits for himself or his children. Applicant testified that he has been paying on them, but he did not provide supporting documentation. He testified that AE H shows that he made a \$20 payment on the debt at allegation 1.c a few weeks before the hearing. However, AE H is a receipt to a state "collection unit" with no indication that it is related to the debt at allegation 1.c. Applicant has included the debts at ¶¶ 1.a, 1.b, and 1.c in his debt consolidation plan. (AE A, N; Tr. 23-29, 37-45)

³ Applicant had several loans from the same bank. He has timely paid on all of these loans, and has paid off all but three; none are alleged in the SOR. (AE C, O, P; Tr. 67-68)

AUTO LOANS

1.d (7,200) – In 2007, this account was transferred to this creditor from a previous lender (see allegation 1.f). The balance reflects the deficiency remaining after Applicant's auto was repossessed. The account is included in Applicant's payment plan. (GE 4, 5; AE C; Tr. 48-50)

1.f (\$12,396) – Applicant testified that this is a duplicate of the auto loan alleged at allegation 1.d. He made the loan payments on this car, which reduced the balance to approximately \$7,000. At that point, he was unable to keep up with the payments, and had the car voluntarily repossessed. The account was closed in 2007. The same loan, with the reduced balance, appears in allegation 1.d. Applicant's May 2011 credit report confirms that the balance owed to the creditor at allegation 1.f is zero, and that the account was transferred to another collector. (GE 5; AE C; Tr. 48-50)

1.g (\$32,000) - Applicant disputes this auto loan debt. When he contacted the creditor, he was told that the company does not have a record of a delinquent debt under his name. He also contacted his ex-wife and learned that the debt relates to a car she bought while they were married. They were not joint owners, and it is titled in her name alone. She has recently filed for bankruptcy protection, and included this car loan in her petition. Applicant did not contact the credit reporting agencies to report the dispute, because he did not know how to formally dispute it. The debt appears in the Government's credit reports of February 2010 and February 2011. It does not appear in the May 2011 credit report. (GE 4, 5; AE C; Tr. 50-51)

CELL PHONE

1.e (\$366) – Applicant testified that he has been making payments on this debt, but did not provide documentation. He plans to include it in his DMP in the future. (Tr. 47-48)

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.⁴ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

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. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

⁴ Directive. 6.3.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ 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 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. Therefore, 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

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.

The relevant disqualifying conditions are AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The delinquent debts Applicant has accrued over the past several years are sufficient to raise these disqualifying conditions. There is no evidence that Applicant's delinquencies stemmed from gambling, alcohol abuse, tax debts, or frivolous spending.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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;

(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;

(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

(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.

Applicant has accrued six delinquencies over the past several years, and as of the hearing date, they remained unpaid. His debts are both frequent and recent, and AG ¶ 20 (a) does not apply.

AG ¶ 20(b) mitigates financial problems that stem from unexpected events beyond an applicant's control. Here, Applicant has been employed by the same federal contractor since 1997, and so has not experienced unemployment. However, he has worked in an administrative position, making a modest income. In addition, he and his ex-wife divorced in 2005, which left him without a second income from his spouse, and with child support obligations. His debts began to become delinquent as a result. However, Applicant did not begin a concerted effort to resolve his debts until prodded by the security clearance process. I find he did not act responsibly in the face of unexpected circumstances, and AG ¶ 20(b) applies only in part.

Applicant has retained a credit counseling company, and has a payment plan in place for about 90 percent of his SOR debt. However, full mitigation under this condition requires that there are indications the problem is under control. Here, although Applicant has made one payment, it appears that he does not have the funds to keep up with the plan. Applicant has a negative monthly cash flow. Although it is unclear as to the amount, it is somewhere between \$95 and \$400 per month. Applicant provided no evidence to show how, with such a negative cash flow, he can maintain monthly payments on his debt plan of \$343. He receives only partial mitigation under AG ¶ 20(c).

AG ¶ 20(e) applies. Applicant disputes the auto loan at allegation 1.g. He has a legitimate basis for his dispute. His ex-wife purchased the car in her name alone; and the creditor has no record of Applicant owing the debt. The debt does not appear on his most recent credit report.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Despite his modest income, Applicant has taken the first step toward resolving his debts. He initiated a payment plan, and provided proof that he made the first payment. He testified candidly about his delinquencies, and his credibility is not in question. However, with his current income, he has a significant negative cash flow each month. The likelihood that he will be able to maintain the substantial monthly payments is low. Without a payment plan to resolve his past-due debts, financial considerations remain a concern. Doubts regarding an applicant's suitability for a security clearance must be resolved in favor of the national security.

This decision should not be construed as a determination that Applicant cannot or will not attain the financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the disqualifying and mitigating factors to the evidence presented. A clearance is not warranted with the Applicant's current circumstances, but should he be afforded an opportunity to reapply for a security clearance in the future, having documentation to show he has established compliance with his repayment plan, he may well demonstrate persuasive evidence of his security worthiness.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude he has not mitigated the security concerns arising from the cited adjudicative guideline.

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.e	Against Applicant
Subparagraphs 1.f – 1.g	For Applicant
Subparagraph 1.h	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge