



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-07913

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

06/25/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the financial considerations guideline. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on April 12, 2010, to request a security clearance required as part of his employment with a defense contractor (Item 5). On February 29, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DoD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006. The SOR listed security concerns addressed in the Directive under

Guideline F (Financial Considerations). In his answer to the SOR, dated March 15, 2013, Applicant admitted all 16 allegations, and requested a decision without a hearing. (Item 4)

Department Counsel submitted a file of relevant materials (FORM)¹ in support of the Government's preliminary decision to deny Applicant's request. The FORM was forwarded to Applicant on April 11, 2012, and he received it on April 16, 2012. He was given 30 days from the date he received the FORM to file a response. Applicant did not submit a response. The case was assigned to me on June 21, 2012.

Findings of Fact

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

Applicant is 38 years of age. He married in 1995, separated in 2007, and divorced in 2009. He has two children who are 12 and 16 years of age. His children live with his ex-wife. Applicant has been living with a cohabitant since August 2009. Applicant worked as a warehouse manager from 2000 to 2007. He then had several periods of unemployment: September 2007 to February 2008; April to September 2008; and September to December 2009. In December 2009, he began his current position as a stock clerk for a defense contractor. This is his first application for a security clearance. (Items 5, 6)

At his May 2010 security interview, Applicant described several events that affected his financial status over the past few years. After working for a company for seven years, Applicant was laid off in 2007 because of the poor economy. He received severance pay and collected unemployment compensation. Applicant stated in his Answer that several SOR debts (rent and his children's school clothes, which are alleged at ¶¶ 1.c, 1.f, and 1.j) became delinquent after he was laid off. (Items 4, 6)

Applicant separated from his wife in 2007. He stated that she remained in the marital home, continued to use the credit cards, and failed to pay the household bills. Applicant pays \$585 in monthly child support; he is current on that obligation. Applicant continued to pay on his accounts until his unemployment in 2008. He supported himself with unemployment compensation and credit cards. During his unemployment in 2009, he lived with his brother and was supported by his brother and sister. Applicant's mother became ill, and Applicant paid for some of her expenses. When she passed away in September 2009, he shared the funeral expenses with his four siblings. He is currently paying his sister \$100 monthly on his \$2,200 share of those expenses. (Item 6)

¹ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

During his 2010 security interview, Applicant said he was considering using a debt consolidation program. More recently, in his Answer to the SOR, Applicant stated that he plans to pay his bills by paying off the smallest debts first. None of his financial problems result from alcohol, illegal drug use, or criminal conduct. (Item 4)

Applicant's February 2012 personal financial statement (PFS) shows that he and his cohabitant earn \$7,600 net monthly income. His monthly expenses are \$7,000, leaving a monthly net remainder of \$600. He states that his household bills are current. He did not list any assets or payments on any SOR debts. (Item 4)

Applicant admitted the debts alleged in the SOR, which are currently charged off or in collection status. These debts, which total \$34,654, appear in Applicant's credit reports of April 2010 and January 2012. Applicant provided a credit report dated February 2, 2012, which lists 13 negative accounts. Applicant stated, and his credit report shows, that he maintained consistent payments on his automobile loan, and it is now paid in full. He has two credit cards with low credit limits that he opened in an effort to re-establish good credit. He pays them on time. He sought, but has been unable to find, part-time employment. (Items 4, 6, 7, 8)

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.² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole-person" concept. 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 security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ 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 applicant to refute, extenuate or mitigate the Government's case.

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ 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 her 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.⁵

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.

Applicant has a history of financial problems, including debts which became delinquent between 2007 and 2010. As of the date of the SOR, he had past-due debts totaling more than \$34,000. His history of failing to meet his financial obligations supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions can potentially mitigate security concerns:

(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;

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; AG ¶ 2(b).

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant's debts started to become delinquent five years ago, they are not in the distant past because the 16 debts alleged in the SOR are still delinquent. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be applied.

Starting in 2007, several circumstances affected Applicant's ability to meet his financial obligations. He separated from his wife, and she stopped paying the household bills, and continued to use their credit cards. Applicant contributed to his mother's support when she became ill, and shared in her funeral expenses when she passed away. He was laid off from his job in 2007, and had periods of intermittent employment and unemployment between 2007 and 2009. For AG ¶ 20(b) to apply in full, an applicant must act reasonably in response to the unforeseen circumstances. Here, Applicant has not acted reasonably. He has been employed full-time since 2009. His cohabitant also contributes substantially to the household income. Applicant discussed seeking assistance from a debt consolidation company, but the file contains no evidence that between 2010 and 2012 he has taken such a step. Applicant has approximately \$700 remaining each month with which he could have taken action on his debts. Applicant did not act reasonably, and receives only partial mitigation under AG ¶ 20(b).

Applicant states that he has paid \$10,000 to pay off his auto loan in full. However, he provided no evidence of payments, a payment plan, or any efforts related to his other debts, other than statements that he will begin to work on them, despite having a monthly net remainder that he could have used for this purpose. Applicant has not made a good-faith effort to resolve his debts, and his finances are not under control. AG ¶¶ 20(c) and 20(d) do not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

Applicant is a mature, 38-year-old adult. Over the past five years, he has accrued more than \$34,000 in delinquent debt. He was put on notice that delinquent debts are a security concern when he completed his security clearance application in April 2010, and again during his security interview in July 2010. Applicants are not required to be debt-free; however, they are expected to develop a plan to resolve their SOR debts, and provide evidence of conduct to implement that plan. To date, Applicant has provided no evidence of a credible plan to deal with the SOR debts, or evidence that he has begun making payments on them. Accordingly, the Government's doubts about Applicant's suitability to hold a security clearance remain.

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
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Subparagraphs 1.a – 1.p:	Against Applicant
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Conclusion

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

RITA C. O'BRIEN
Administrative Judge