



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



In the matter of:)
)
) ISCR Case No. 11-01594
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

04/20/2012

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 August 4, 2010, to request a security clearance required as part of his employment with a defense contractor (Item 3). On November 23, 2011, 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) of the AG. In his answer to the SOR, dated December 16, 2011, Applicant admitted all seven allegations, and requested a decision without a hearing. (Item 2)

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 January 31, 2012, and he received it on February 15, 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 April 17, 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 47 years of age. He married in 1985, and has two adult children. After two years of training in aeronautics from 1982 to 1984, he received an airframe and power plant license. As of August 2010, he was employed by a defense contractor as a sheet metal mechanic. (Item 3)

At his 2010 security interview, Applicant admitted that he had numerous credit card accounts. They started to become delinquent in 2007, when he could not both pay his children's college expenses and his credit card debt. He stopped making payments in 2008. Applicant provided evidence that he has retained a consumer credit counseling agency. He stated he made monthly payments of \$427. In early 2010, the agency negotiated settlements and paid two large credit card debts. At the time, he stated that his current bills were paid timely and he planned to be debt-free within three years. Applicant provided evidence of payments he made to the company in 2011, but no evidence of recent payments. (Items 5, 6)

Applicant's October 2011 personal financial statement and pay statement show net monthly income of \$6,861 and expenses of \$3,175. In addition, he listed debt payments of \$2,930. Subtracting his expenses and debt payments (\$6,105) from his income leaves a monthly remainder of \$756. (Item 5)

Applicant admitted the seven debts alleged in the SOR, which are currently charged off or in collection status. These debts, which total \$65,345, appear in Applicant's credit reports of August 2010 and September 2011. In his interrogatory response of October 2011, Applicant noted that he has made two \$1,000 payments on a \$5,000 credit card debt, and provided evidence that he is making monthly payments of \$100. He now owes approximately \$2,100. The debt is not listed in the SOR, and

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.

Applicant's August 2010 credit report shows it is current. Applicant also stated in his interrogatory response that he is unable to pay the debts alleged at SOR ¶¶ 1.b, 1.c, 1.f, and 1.g, because of insufficient funds, but plans to establish a payment plan in place when the money is available. (Items 2, 5, 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.

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

² Directive. 6.3.

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

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 delinquent debts. His debts started to become delinquent in 2008, because of college expenses for his children. As of the date of the SOR, he had past-due debts totaling approximately \$65,000. 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;
- (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.

Applicant's failure to pay his debts did not occur in the distant past, because his debts are still delinquent. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be applied.

Applicant had numerous credit card accounts and in 2008, his ability to pay them timely was affected when he had the financial burden of his children's college expenses. However, he did not list any financial circumstances that were beyond his control, such as unforeseen medical expenses, or the sudden loss of income due to divorce or death. Applicant acted responsibly when his debts became overwhelming by obtaining the assistance of a debt-resolution firm. It has helped him pay two substantial debts that do not appear in the SOR. His evidence shows that he was making payments in 2011, but the file contains no evidence of recent payments. Applicant receives partial mitigation under AG ¶¶ 20(b) and (c).

The file contains evidence that Applicant has made efforts to meet his financial obligations, and receives credit for his efforts between 2008 and 2011. However, he provided no evidence of recent payments to the debt-resolution firm. In addition, he has several large debts for which he has no payment plan, despite having a monthly net remainder of more than \$700, which could be used for this purpose. AG ¶ 20 (d) applies in part.

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 47-year-old adult. Over the past four years, he has accrued approximately \$65,000 in delinquent debt. He has been aware that delinquent debts are a security concern since he completed his security clearance application in August 2010.

In response to the Government's concerns, Applicant offered proof that he has a relationship with a debt-resolution firm, and has paid off two delinquent credit card accounts. However, there is no evidence that the debts alleged in the SOR are included in his plan with the debt-resolution firm. 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. Applicant has not provided evidence that he has established a payment plan for the SOR debts, and has begun making payments

on them. Accordingly, the Government's doubts about Applicant's suitability to hold a security clearance remain.⁶

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.g | Against Applicant |

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

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).