



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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 [NAME REDACTED]) ISCR Case No. 11-03267
)
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)
 Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

07/26/2012

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On October 22, 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. On February 2, 2012, DOHA issued to Applicant a Statement of Reasons (SOR) alleging

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

facts which raise security concerns addressed in the adjudicative guidelines (AG)² for personal conduct (Guideline E) and financial considerations (Guideline F).

Applicant answered the SOR (Answer) on February 29, 2012, and requested a hearing. On May 9, 2012, DOHA Department Counsel issued to Applicant an *Amendment to the Statement of Reasons* (Amendment). The Amendment added three factual allegations (SOR 2.e - 2.g) under Guideline E. Thereafter, Applicant provided an undated and unsigned response to the Amendment (Second Answer). This case was assigned to me on May 29, 2012.

Pursuant to a Notice of Hearing issued on June 2, 2012, I convened a hearing in this matter on June 20, 2012. The parties appeared as scheduled. The Government presented Government's Exhibits (Gx.) 1 - 14, which were admitted without objection.³ 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. The record closed on July 9, 2012, when I received Applicant's timely post-hearing submission. It is included in the record, without objection, as Applicant's Exhibit (Ax.) A.⁴

Findings of Fact

In the SOR, the Government alleged, under Guideline F, that Applicant owed approximately \$49,121 for 13 past-due debts (SOR 1.a - 1.m). Applicant admitted, with explanation, the allegations at SOR 1.a, 1.d, 1.e, 1.g, 1.h, and 1.m. He denied the remaining Guideline F allegations. Also, it was determined at hearing that SOR 1.b and 1.i allege duplicate debts. (Tr. 97 - 98) Accordingly, SOR 1.i, which alleged a collection account for \$836, is resolved for Applicant, and the total debt at issue is \$48,285.

Under Guideline E, the Government alleged in the original SOR that Applicant's negative answers in his October 2010 eQIP constituted deliberate false statements to the Government concerning information required to determine his continued eligibility for access to classified information. Specifically, the Government cited his answers to question 26.e, regarding whether a judgment had been entered against him in the previous seven years (SOR 2.a); to question 26.g, regarding whether any of his debts had been referred to a collection agency in the previous seven years (SOR 2.b); to question 26.j, regarding whether Applicant had been delinquent on any court-ordered

² 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).

³ Department Counsel provided an index of its documents. It is contained in "List of Government Exhibits" and included in the record as Hx. I. See also Tr. 33 - 46.

⁴ Ax. A is 35 pages in length. It includes Department Counsel's waiver of objection, a letter from Applicant to the Administrative Judge, an email from Applicant to Department Counsel with 18 pages attached, an email from Applicant to Department Counsel with nine pages attached, and five pages of email between Department Counsel and Applicant verifying that everything Applicant submitted was received as intended.

child support payments in the previous seven years (SOR 2.c); and to question 26.k, regarding whether his wages had been garnished in the previous seven years (SOR 2.d). Applicant denied each of these allegations.

In the Amendment, the Government alleged that Applicant deliberately falsified answers to questions in a Security Clearance Application he submitted on March 15, 2000 (SF 86), and a Questionnaire for National Security Positions (QNSP) dated November 12, 2008. Specifically, the Government alleged that in his March 15, 2000 application, in response to SF 86 question 25 (Your Police Record - Military Court), Applicant deliberately omitted that he was punished under Article 15 of the Uniform Code of Military Justice (UCMJ) in 1996, which was within the seven year scope of that question (SOR 2.e). The Government further alleged that Applicant deliberately made false statements through his negative answers to SF 86 questions 38 (more than 180 delinquent on any debt in the previous seven years) and 39 (currently more than 90 days delinquent on any debt) (SOR 2.f). Finally, the Government alleged that Applicant deliberately made false statements through his negative answers to QNSP questions 28.g (bills referred for collection), 28.h (credit accounts charged off or cancelled for failure to pay), and 28.j (delinquent of court-ordered child support) (SOR 2.g).

In his Second Answer, Applicant admitted the Amendment allegations. However, during a review of the pleadings at hearing, it was determined that Applicant did not mean to admit to the gravamen of these allegations, namely, intent to falsify. Accordingly, denials were entered in response to these allegations. (Tr. 20 - 27)

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 40 years old and employed by a defense contractor in a position that requires a security clearance. He was hired by his current employer in March 2012, but he has not actively worked or received income from that job since late April 2012. His status with that company is on hold pending the results of this case. Applicant has held a security clearance since 1993, when he was in the military. (Gx. 2; Gx. 10) The current adjudication of his security clearance was initiated when he applied for a security clearance through his previous employer, where he worked from August 2010 until he was laid off in March 2012 after his company lost its DoD contract.

Applicant served in the U.S. Army from September 1992 until August 2008. He received an honorable discharge as a sergeant first class (E-7), but the end of his military service was premature, caused by complications from knee surgery, which left him physically disqualified to perform his assigned duties. Applicant's Army service was superior. He was recognized for his performance on numerous occasions, and he received at least ten personal decorations. (Gx. 1; Ax. A; Tr. 66 - 67)

Applicant's military assignments were as part of the Army's Signal Corps, which manages communications and information systems. Since leaving the Army, he has been steadily employed in information systems technology positions, most of which have required a security clearance. There are no documented periods of unemployment

since 2008. However, Applicant testified that he was unemployed for about two months between his discharge and his first civilian job in 2008. (Gx. 1; Tr. 68)

When Applicant left the Army, he and his wife resided in State A. He stayed there when he obtained civilian employment. In 2010, he and his wife moved to their current residence in State B to be closer to family and to take the job Applicant held until he was laid off in March 2012. Applicant's wife had worked as a civilian government employee while they lived in State A. However, she has been unable to find work in her field since they moved to State B. The cost of living in State B is significantly higher than in State A. (Gx. 1; Gx. 2; Tr. 55 - 56, 68 - 69)

Applicant is currently married for the third time. He and his wife have been married since July 2008. They have a two-year-old child together. Applicant was married the first time between 1996 and 2002. His second marriage started in 2005 and ended in 2008. In addition to his two-year-old child, Applicant has three children, two of whom (ages 20 and 16) were born out of wedlock. Another child, now age 14, was born to Applicant and his first wife. (Gx. 1; Gx. 2; Tr. 58 - 61)

In 1994, Applicant set up an allotment from his Army pay for monthly child support payments of \$336.30 for his oldest child. In 1997, he set up a child support allotment of \$200 monthly for his second child. According to leave and earnings statements (LES) from 2006, he had over \$1,200 withheld from his Army pay each month for child support, but it is unclear if these were involuntary garnishments or allotments established by Applicant. A summary of his personal interview in December 2010 characterized his child support payments as the result of involuntary garnishments. He averred at hearing that his pay was not garnished. (Gx. 2; Ax. A; Tr. 90 - 91)

Applicant's child support payments taken from his military pay stopped when he was discharged in 2008. Thereafter, he averred that he paid support directly to the mothers of his children. However, a 2009 credit report included a delinquent child support debt of \$8,577 owed to the child welfare agency in the state where Applicant's oldest child lived. This is the debt alleged at SOR 1.f. A 2011 credit report shows Applicant owes \$19,958. This is the debt alleged at SOR 1.e.

Applicant insisted at hearing that he has been paying support directly to the mothers and that he can document his payments. He also averred that he has been trying to resolve his debts with the state agencies involved, but that he has been told his payments are characterized as gifts to the mothers and do not fulfill his obligation to pay support required by the state agencies. (Tr. 50 - 51, 56, 62 - 63, 86 - 90, 113 - 115; Gx. 2; Gx. 7; Gx. 9) Applicant provided information about withholding from his Army pay, but despite extra time allowed after the hearing, he did not submit any records of child support payments or any disputes he has filed with the state child welfare agencies involved. (Ax. A)

Applicant has used several personal loans over the past few years to get cash for various expenses and to pay debts. His credit history shows that most were "payday loans" and were from the same lender specializing in short-term loans to military

personnel. Applicant paid all of those loans back. However, in February 2008, he also took out a personal loan with the bank that issued the credit card referenced in SOR 1.m. Applicant used that loan to pay past-due debt he had in 2008. He paid on this loan until late 2009 or early 2010. As alleged at SOR 1.h, he still owes \$6,399 for this delinquent debt. Applicant has had recent contact with this creditor, but has not taken any substantive action to resolve this debt. (Gx. 7; Gx. 8; Gx. 9; Tr. 92 - 94)

In 2009, Applicant and his wife incurred a debt for \$1,470 in unpaid rent in State A. In November of that year, the landlord filed a civil complaint to enforce the debt, which is alleged at SOR 1.a. Applicant was unaware of the civil suit until August 2010, when he received mail forwarded from a previous address. Because Applicant had not responded to a notice of that suit, a default judgment was entered against him. Applicant averred at hearing that he resolved the debt in about October 2010. However, he provided no documentary support for his claim, and the judgment appears on his most recent credit report. (Gx. 8; Gx. 9; Tr. 77 - 79, 109)

Applicant claimed he has paid the debt alleged at SOR 1.b for a delinquent cell phone account (\$836). He also claimed that the actual debt was about \$400. While he provided no documents supporting his claims, this debt does not appear on the most recent credit reports available. (Gx. 8; Gx. 9; Tr. 81 - 83)

The \$1,074 debt alleged at SOR 1.c is for a delinquent cable television and internet account in State A. It became delinquent around March 2010. Applicant testified it was an account he held with his second wife, who either did not pay the account or return the cable box and modem after he left in 2008. However, he also admitted he and his current wife had an account with the same company before they moved from State A to State B in 2010. (Gx. 8; Gx. 9; Tr. 83 - 84, 110 - 111)

Applicant also owes \$7,337 for a delinquent credit card, as alleged in SOR 1.d. The account was opened in 2007 and was last paid as agreed in 2008. Applicant testified that the account became delinquent during his last period of unemployment in 2008. He claimed that he has been paying \$100 each month on this debt, but there is no documentary corroboration of his claim in this record. (Gx. 7; Gx. 8; Tr. 84 - 86) Applicant also owes \$970 for a delinquent credit card as alleged in SOR 1.m. He last paid on this account in 2010. (Gx. 7; Gx. 8; Tr. 98 - 99)

Although he admitted the SOR 1.g debt (\$982) in response to the SOR, at hearing Applicant testified he did not know why this debt is attributed to him. The money is owed for a delinquent cell phone account with a carrier with which Applicant claims he has never had an account. Applicant has not disputed this account with the creditor or with any of the credit reporting agencies, and it does not appear on the most recent available credit report. (Gx. 8; Gx. 9; Tr. 91 - 92)

Applicant denied owing the \$2,986 debt alleged at SOR 1.i for a past-due car loan. He testified that he still has the car and that he is current on the account. He also provided copies of his past two payments on that account. A past-due car loan with the creditor listed in SOR 1.i is attributed to Applicant in credit reports from 2009 and 2010,

but no such entry appears in the most recent credit report. (Gx. 7; Gx. 8; Gx. 9; Ax. A; Tr. 94 - 95)

Applicant testified that the debts alleged at SOR 1.j (\$395) and 1.k (\$264) are for medical bills that should have been covered by his military medical insurance. He received treatment for kidney stones by a civilian medical provider, but was erroneously billed the amounts alleged. Applicant claimed he paid both debts in 2008 after trying to straighten out the claims for several months. The accounts had been referred for collection to the creditors listed in the SOR; however, Applicant provided information from a recent credit report indicating the debts were returned to the hospital where he was treated. He also showed that he paid that hospital \$2,026 in September 2011. The debts at SOR 1.j and 1.k are not reflected in the most recent credit report obtained by the Government. (Gx. 8; Gx. 9; Ax; A; Tr. 96 - 97, 111 - 113)

Applicant testified that his current finances are not good. He cannot work at his current job without a clearance, and he cannot get unemployment benefits because he is still listed as an employee for his company. However, he also testified that before he was laid off in March 2012, he did not have much money remaining each month after expenses. (Tr. 118 - 124)

Applicant first applied for a security clearance in 1993 in connection with his Army service. He has reapplied for clearances at least three times, including his most recent application in 2010. Applicant also has been interviewed about financial problems during background investigations in 2003 and 2010. In his 2003 subject interview, he stated his intention to make arrangements with all of his creditors by May 2003. (Gx. 1; Gx. 2; Gx. 10 - 13)

Applicant did not list any of his past-due debts in his October 2010 e-QIP, his November 2008 QNSP, or his March 15, 2000 SF 86. Applicant knew he had debts and other financial problems, including the civil judgment for unpaid rent, before he completed his 2008 QNSP and his 2010 eQIP. But it was not established, that his omissions of adverse financial information from his March 2000 SF 86, were intentional, as alleged in SOR 2.f. SOR 2.f is resolved for the Applicant. However, at hearing, he characterized his failure to list disclose his adverse financial information in his last two applications for clearance as “a bad decision...a bad choice.” (Tr. 99 - 107)

In 1993, Applicant received non-judicial punishment (NJP) while in the Army for arguing with a former girlfriend. He received 14 days extra duty. The Government alleged in SOR 2.e that he intentionally did not disclose, in his March 2000 SF 86, that he received NJP “in approximately 1996.” Applicant answered “no” to the following question:

25. Your Police Record - Military Court: In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? (Include non-judicial, Captain’s mast, etc.)

(Gx. 2; Gx. 11)

The allegation at SOR 2.e is not supported by the facts. Nor is it clear that Applicant was obliged to disclose his 1993 NJP as it occurred approximately seven years before he submitted the March 2000. SOR 2.e is resolved for the Applicant.

Policies

A security clearance decision is intended to resolve whether it is clearly consistent⁵ 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 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 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.⁷

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

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

⁶ Directive. 6.3.

⁷ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Financial Considerations.

The Government presented information that showed Applicant has experienced significant financial problems since at least 2000. His most recent background investigation produced information that attributed to Applicant 13 past-due debts totaling \$49,139. Available information also showed that Applicant has been investigated about his financial problems several times since 1993, when he first applied for a clearance through his military service. Applicant's credit history also shows that he has had little positive cash flow despite being gainfully employed since 1993, and that he has relied to excess on personal credit for expenses over several years. 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*); AG ¶ 19(c) (*a history of not meeting financial obligations*); and AG ¶ 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*).

Applicant's post-hearing submissions and the absence of some of his debts from the most recent credit report obtained by the Government support a conclusion that the debts at SOR 1.b, 1.i, 1.j, and 1.k have been paid or otherwise resolved. However, Applicant's remaining past-due debts are significant.

Applicant averred that his financial problems were caused by two divorces, and periods of unemployment. However, he did not present any information to support his claims or to show how those circumstances might still impair his financial well-being. Nor did he show that he has acted responsibly in the face of those circumstances. He also claimed that he is disputing the status of his child support obligations and other debts. Applicant submitted documentation of his child support allotments from his Army pay, but presented no information to support his claims that he continued making payments directly to the mothers of his children. Nor did he present information documenting his disputes with state child welfare agencies. Applicant has not engaged

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

in any financial counseling or credit assistance programs, and his personal finances are, by his own admission, not very good. Although he cited his current employment status as the chief hindrance to his debt resolution efforts, the record shows that his monthly finances had little margin for error while he was earning a good wage before being laid off earlier this year. Of the mitigating conditions listed at AG ¶ 20, I conclude that none of them apply. Although his current financial problems may be attributable to recent events, Applicant has not mitigated the recurring security concerns about his poor financial record over at least the past 12 years.

Personal Conduct

Applicant denied that he intentionally withheld relevant information about his finances and a military disciplinary event from his security clearance applications in 2000, 2008, and 2010. The Government met its burden of proving those controverted issues of fact as to SOR 2.a - 2.d, and 2.g. These facts raise a security concern about Applicant's trustworthiness and judgment, that is addressed at AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, information about Applicant's adverse personal conduct supports application of the disqualifying condition at AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I also considered all of the pertinent mitigating conditions under AG ¶ 17 and conclude that none of them apply. There is no indication that Applicant ever tried to disclose his financial problems before being confronted about his debts in his most recent subject interview. Nor did he show that his omissions were based on any competent advice from an appropriate source. Further, deliberately making false statements to any agency of the United States concerning a matter within its jurisdiction is a violation of federal criminal law. More important, it is a fundamental breach of a basic tenet of the Government's personnel security programs. Thus, it cannot be considered minor. Applicant has submitted several security clearance applications since he joined the Army in 1993. He knew or should have know the importance of being candid with the Government at all times in response to reasonable inquiries into his background. Certainly, after he was interviewed about his finances in 2003, Applicant was on notice of the need to provide accurate information about his finances. His deliberate decision to withhold such information on at least two occasions is fundamentally at odds with the Government's need to grant access to classified

information based on accurate and complete information. Available information about Applicant's personal conduct does not support a conclusion that his conduct will not recur or that his judgment is suitable for access to classified information.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and 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 record of Army service and 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 and about his willingness to lie to the Government about his 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.c - h:	Against Applicant
Subparagraphs 1.b, 1.i - 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against Applicant
Subparagraphs 2.e - 2.f:	For Applicant
Subparagraph 2.g:	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