



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-03547
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

10/24/2012

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his finances. His request for a security clearance is granted.

Statement of the Case

On October 11, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to renew his eligibility for a security clearance required for his employment 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 find that it is clearly consistent with the national interest to continue Applicant’s access to classified information.¹ On March 16, 2012, DOHA issued a Statement of Reasons (SOR) alleging facts that raise security concerns

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

addressed in the adjudicative guidelines (AG)² regarding financial considerations (Guideline F).

Applicant timely answered the SOR (Answer) and requested a hearing. The case was assigned to me on June 21, 2012, and I scheduled this matter for hearing to be held on July 17, 2012. The parties appeared as scheduled. The Government presented 13 exhibits (Gx.), which were admitted, without objection, as Gx. 1 - 13.³ Applicant testified and proffered five exhibits (Ax.), which were admitted, without objection, as Ax. A - E.⁴ DOHA received a transcript (Tr.) of the hearing on August 2, 2012.

Findings of Fact

In the SOR, the Government alleged, under Guideline F, that Applicant owed approximately \$75,553 for nine delinquent or past due accounts (SOR 1.a - 1.i). The mortgage debts alleged at SOR 1.e (\$23,610) and 1.f (\$50,867) comprise 98% of the debt alleged. Applicant admitted, with explanations, all of the allegations, and he provided several attachments to his answer that were made part of the record without objection. (Tr. 9 - 14) His admissions are incorporated in my findings of fact. Having reviewed his response to the SOR, the attachments to his response, the transcript, and the exhibits, I make the following additional findings of fact.

Applicant is 41 years old and requires a security clearance for his position as an installation supervisor. He first received his industrial clearance in 1999. He has worked for his current employer since May 2008. He held a similar position with another defense contractor from May 1996 until he was hired by his current company. As with his previous job, Applicant's current work requires travel for extended temporary duty (TDY) at government sites in the United States and abroad. His eQIP lists several long-term temporary residences in company-funded lodging through 2009. (Gx. 1; Gx. 4; Tr. 66 - 67)

Applicant has been married twice. His first marriage began in January 1993 and ended by divorce in September 1995. He and his second wife have been married since December 1998. Applicant has a 14-year-old child from outside his two marriages for whom he pays about \$600 in child support each month. Applicant has a 12-year-old child with his current wife, who has three adult children from a previous marriage. (Gx. 1; Gx. 4)

After Applicant's divorce in 1995, he experienced financial difficulties for about seven years. When he underwent a periodic review of his eligibility for a security clearance in 1999 or 2000, the adverse financial information identified in his background investigation prevented adjudicators from concluding that it was clearly consistent with

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 Tr. 20 - 30.

⁴ Tr. 32 - 39, 104 - 105.

the national interest to continue his clearance. On October 24, 2001, DOHA issued Applicant an SOR alleging he owed at least 18 past-due or delinquent debts totaling approximately \$14,000. The debts included unpaid taxes, civil judgments for unpaid rent, unpaid utilities, unpaid fines stemming from a criminal charge, and other unpaid personal credit accounts. Applicant requested a hearing before a DOHA administrative judge. The hearing was held in April 2002, and, in July 2002, it was determined that Applicant's financial problems were caused by unforeseen or uncontrollable circumstances, namely, his ex-wife's failure to properly manage their finances during his many absences, and the costs of his divorce (child support, legal fees, etc.); that Applicant had paid or resolved several of his delinquent debts; and that he had improved his personal finances during his second marriage and with the help of his parents. In May 2000, Applicant's father was a co-borrower on Applicant's mortgage for a house in State A because Applicant's credit was poor. The administrative judge concluded that Applicant had mitigated the Government's concerns about his finances, and Applicant's clearance was renewed in August 2002. (Gx. 1; Gx. 6; Gx. 7; Tr. 79)

Applicant's finances were sound from 2002 until about May 2009. He had steady income from his current employment, while his wife stayed home with their child and one stepson. In 2003, Applicant was able to refinance the house in State A and have his father's name removed from the title and mortgage. Applicant cashed out about \$80,000 in equity through this refinance. In 2006, he obtained a \$60,000 home equity line of credit (HELOC) on his State A house. The funds from the 2003 refinance and the 2006 HELOC were used for various purposes over the years, such as financing cars, vacations, and home improvements. The cash-out refinance and HELOC brought Applicant's total mortgage obligation to about \$314,000. (Gx. 4; Tr. 79 - 80)

One of Applicant's stepsons suffers from a bipolar disorder. In high school, the boy would often become argumentative and violent. Police were called several times either to school or to Applicant's home in response to the boy's aggression. In September 2008, Applicant's stepson began home schooling because the local public school he was attending refused to readmit him for his senior year. In June 2008, Applicant began an extended TDY to State B. Applicant's wife, the boy's mother, often reported that the stepson was acting out at home. In January 2009, the boy assaulted his mother and would not let her out of the house. After police removed the boy, he was placed in a residential treatment facility for a time, but went to live his father in State C. Applicant's wife then insisted that they move, because she feared the boy would return and further assault her and damage their house. Applicant returned from TDY, put the house on the market, and brought his wife and their child back to State B for the balance of his TDY. In June 2009, they permanently relocated to temporary corporate housing in State D, where they still live. (Tr. 41 - 45, 90 - 92)

When Applicant put his house up for sale, he owed about \$309,000 for the first mortgage plus the HELOC. However, because of the precipitous decline in housing values in State A, the market value of Applicant's house was about \$268,000. After being unable to sell the house and satisfy his mortgages, Applicant enlisted the services of a "household mediation" company that specialized in distressed mortgages and short sale negotiations with banks and other mortgage lenders. This process resulted in a short sale that satisfied both the first mortgage and the HELOC in February 2012.

However, the house was sold for approximately \$113,000 less than what he owed. While the short sale relieved Applicant of his obligations on both the mortgage and the HELOC, which are alleged at SOR 1.e and 1.f, the difference between the total amounts due and the actual sales price will likely be imputed to him as income for the 2012 tax year. (Attachments to Answer; Tr. 55 - 58)

Applicant stopped paying on both mortgages in May 2009 as part of his effort to dispose of the house through short sale as a "distressed property." The monthly payment on both loans was about \$2,000. However, from the time he brought his wife and child to live with him in State B, he was living at no cost to him in corporate housing, until they relocated to State D and found a rental property in September 2009. The total funds that would have been spent on his mortgages during the period May 2009 until September 2009 was about \$10,000. Applicant used about half of that money to pay for his family to move in January 2009, again in June 2009 to State D corporate housing, and, finally, in September 2009 to pay deposits and other expenses when they moved into their rental. (Gx. 4; Tr. 64 - 68)

Applicant also incurred \$1,076 for the other six debts alleged in the SOR, all of which became delinquent in 2009 or 2010. He averred that, because he was away on TDY and did not routinely check his credit report, he was unaware of those debts until he was interviewed by a government investigator in December 2010. He also acknowledged that those debts became past-due through his own negligence. Applicant presented information showing he has paid or settled the debts at SOR 1.a - 1.c, 1.g and 1.i. He testified that he has been unable to find out any information about the \$106 debt for medical services at SOR 1.h. He further opined that all of the medical debts alleged in the SOR are likely related to treatment of his bipolar stepson. (Answer; Gx. 2; Gx. 4; Ax. B; Ax. C; Ax. D; Tr. 34, 38 - 40, 46, 52 - 55, 58 - 63, 68 - 70)

Applicant averred that his current finances are generally sound. In support of this, he presented a monthly budget that shows a positive net cash flow in excess of \$3,000 depending on how much overtime he works while on travel. From this, however, he acknowledged that he actually realizes about \$1,300 after all his expenses and obligations. (Ax. A; Tr. 99 - 102)

In February 2011, Applicant's father helped Applicant buy a house so Applicant's family could reduce expenses and leave an increasingly untenable rental property. Again, Applicant's credit did not allow him to qualify for a mortgage. His widowed father used part of his own savings to combine with funds from Applicant's retirement savings account to put 20% down on a \$175,000 house with a negotiated sale price of \$140,000. His father will sell his own house and move in with Applicant's family. Applicant's name is on the title to the house but not the mortgage, and the house will pass to Applicant assuming his father predeceases Applicant, who gives his father money for the mortgage payment each month. (Answer; Tr. 47 - 50, 107 - 113)

Applicant has been current on his child support payments since 1997, when he first learned he was the father of his 14-year-old child. He also has been repaying the loan he took from his retirement account for the down payment on his current house. Applicant also disclosed that he is paying a federal tax debt for unpaid taxes for 2008

and 2009. Finally, he disclosed that he has a checking account line of credit with a balance of \$12,000 as of the hearing. But he has less than \$1,000 in his checking and savings accounts combined. Applicant's wife recently started working outside the home and brings home about \$1,000 each month from her job. (Answer; Ax. A; Ax. E; Tr. 70 - 77)

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

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.

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

Analysis

Financial Considerations

Department Counsel presented information to support the allegations in SOR 1.a - 1.i. Applicant owed \$75,553 for nine accounts that became delinquent or past due in 2009 and 2010. Those debts were largely unpaid or unresolved when the SOR was issued in March 2012. 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, available 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*). AG ¶ 19(c) is applied, in part, because of his current debts and because he previously experienced significant financial problems from 1995 until about 2002. His earlier debts were, of course, the subject of his 2002 DOHA hearing. Although Applicant was found to have mitigated the security concerns in that case, his earlier financial problems and his response to them are pertinent in this case. Available information in this case was sufficient to shift to Applicant the ultimate burden of persuasion to mitigate these security concerns.

Of the mitigating conditions listed at AG ¶ 20, the following are potentially applicable here:

(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; and

⁸ See *Egan*; AG ¶ 2(b).

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

As to AG ¶ 20(a) and AG ¶ 20(b), the majority of Applicant's debt in this case arose because he had to remove his wife and child from a dangerous situation involving her bipolar son. Compounding this unplanned move was the fact that Applicant's mortgages far exceeded the declining market value of his house and he was unable to sell in a timely manner. Applicant eventually resolved his mortgage debts through a short sale in early 2012, but he may incur an income tax liability based on the \$113,000 of mortgage obligation of which he was relieved in that transaction. However, it is not a certainty that such a tax liability will result, or, if it does, what the impact on his finances will be. Ultimately, these mitigating conditions apply because Applicant has paid or resolved all but the debt alleged at SOR 1.i, for which there is no available information, and he exhibited good judgment in trying to resolve his mortgage obligations to the best of his ability, while also providing for the basic needs of his family. Applicant is once again a homeowner, albeit, with his father's help.

This case is complicated by the fact that Applicant had an period of debt more than ten years ago, the security consequences of which were addressed and resolved in a DOHA hearing. In that case, as here, Applicant incurred debts through circumstances largely beyond his control. Then, as now, he took prudent action under the circumstances and resolved most of his financial issues. In both cases, there was no financial misconduct or gross errors in financial judgment that resulted in Applicant's delinquencies. On balance, Applicant has mitigated the security concerns about his finances.

Whole-Person Concept

I have assessed the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guideline F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible adult who has been trying to provide for his current wife, child, and stepchildren despite the fact that he is away from home for his job, and despite the fact that one of his stepchildren so disrupted his household that he had to move his wife and child with little time to prepare. All available information about his response to personal adversity and financial problems supports a conclusion that Applicant has the requisite judgment and reliability for continued access to classified information.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.i:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge