



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 11-04551
)
)
 Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

08/29/2012

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his financial problems. His delinquent debts arose through his own poor financial management, and his debts have only recently been addressed. Applicant also has a significant negative monthly cash flow. His request for a security clearance is denied.

Statement of the Case

On August 15, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance needed for his work with a defense contractor. Based on a review 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 grant his request for a security clearance.¹ On February 23, 2012, DOHA issued to Applicant a Statement of

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

Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline (AG)² for financial considerations (Guideline F).

Applicant answered the SOR (Answer) on March 23, 2012, and requested a hearing. Pursuant to a Notice of Hearing issued on June 11, 2012, I convened a hearing in this matter on June 26, 2012. The parties appeared as scheduled. The Government presented Government's Exhibits (Gx.) 1 - 5, which were admitted without objection. Applicant testified in his own behalf and submitted Applicant's Exhibits (Ax.) A - C, which were admitted without objection. DOHA received a transcript (Tr.) of the hearing on July 5, 2012. I left the record open to receive additional information from the Applicant. However, he made no post-hearing submission, and the record closed on July 20, 2012.

Findings of Fact

In the SOR, the Government alleged that Applicant owed \$42,644 for two delinquent credit cards (SOR 1.a and 1.b) and two delinquent student loans (SOR 1.c and 1.d). Applicant admitted all of the allegations. In addition to his admissions, I make the following findings of fact.

Applicant is 40 years old and employed as a commercial diver by a defense contractor in a position that requires a security clearance. He was hired for that position in September 2007. Before then, he worked as a diver for a company that did not have contracts requiring him to have a clearance. Applicant worked there from November 2004 until September 2007. From May until November 2004, he attended a commercial diving and technical school to acquire the skills and certifications for his current occupation. For 11 years before then, he worked as an electrician. This is his first request for a clearance. (Gx. 1; Tr. 44)

Applicant was married in September 1998 and divorced in May 2005. He and his ex-wife separated when he started school. They sold their marital residence during the divorce and split the proceeds. Applicant used his share as a down payment to buy a house in May 2005. The mortgage on that house has a monthly payment of \$1,328. Applicant stated that his financial problems arose due to the purchase of his house, because he soon found himself in over his head. On occasion, he has had to ask his parents for financial help to make his mortgage payments. He averred that he used credit cards to help meet expenses because he thought it would be easier to manage his cash flow through those accounts. He soon realized he also could not keep up with his credit cards because the interest increased when he was late with his monthly payments. Applicant is current on his mortgage. (Gx. 1; Gx. 4; Gx. 5; Tr. 18, 37 - 39, 46 - 50)

Applicant disclosed in his eQIP the delinquent debts alleged at SOR 1.b and 1.d. A credit report obtained during the ensuing background investigation attributed to

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).

Applicant those debts, as well as the debts at SOR 1.c and 1.d. The SOR 1.a debt is a delinquent credit card that is being enforced through a civil judgment entered against him in August 2008. Since about October 2011, Applicant has been paying \$100 each month according to a repayment agreement with the creditor. (Gx. 1; Gx. 2; Ax. A; Tr. 51 - 54)

The debt at SOR 1.b is for a delinquent credit card. It was referred for collection in September 2009. Since July 2011, Applicant has been paying \$100 as part of an agreement with the collection agency. (Gx. 1; Gx. 4; Gx. 5; Ax. C)

The debt at SOR 1.d is a delinquent student loan account. Applicant funded his technical school with federally-guaranteed student loans totaling about \$21,000. He made the required monthly payments until sometime in early 2006. Thereafter, he made sporadic payments, but the debt became delinquent and was referred for collection around the middle of 2009. The balance has increased over time due to interest and penalties. In December 2011, he started paying \$333 each month as part of a student loan rehabilitation program. His required payments have now decreased to \$179. (Gx. 1; Gx. 4; Gx. 5; Ax. B; Tr. 66)

Applicant also used a privately-backed student loan to meet expenses during school. The debt alleged at SOR 1.c represents that debt, which became delinquent around the same time as the federal student loan. In trying to set up a payment plan, Applicant has not been able to establish who holds that account. (Answer; Gx. 4; Tr. 33 - 34, 45, 54)

Applicant's gross income each month ranges between \$1,388, when he is not actually diving or assisting in a dive, and \$6,176, when he is the primary diver on a job. When he submitted a personal financial statement (PFS), he declared an average gross monthly income of \$3,782. From that, he deducted monthly tax and insurance payroll deductions of \$956, for a monthly net income of \$2,825. From that figure, he deducted other monthly expenses for food, clothing, utilities, daycare, and so on, totaling \$1,270. He also declared as expenses his mortgage, payment to a home security company, and the monthly payments to the creditors for the debts at SOR 1.a, 1.b and 1.d. These totaled \$1,971. The net result, using his average gross monthly income, was a monthly deficit of about \$416. Since submitting the PFS, Applicant has had to buy a car big enough for his fiancée and their child. He financed the purchase of a 2008 model year vehicle, for which he pays \$320 each month in addition to the expenses listed in the PFS. (Gx. 5; Tr. 42, 55 - 61)

Applicant has a child, born in January 2010. Since November 2009, Applicant has been living with the child's mother, to whom he has been engaged since October 2011. His fiancée is employed full-time and her income in 2011 was about \$48,000. She helps pay household expenses, but she and Applicant have no joint bank accounts. Applicant testified that they use a budget each month but he did not elaborate with any details. (Gx. 1; Gx. 4; Tr. 19, 37, 48 - 49, 55) Applicant has not incurred any new delinquent debts since 2010. He has considered obtaining financial counseling or other professional advice, but he has not yet done so. (Tr. 68)

Applicant was given extra time after his hearing to provide more detailed and up-to-date information about his monthly income, his fiancée's income, and the balances on the debts he has been paying. However, he did not provide any further information. (Tr. 68 - 72)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent³ 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,⁴ 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.⁵

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

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

⁴ Directive, 6.3.

⁵ See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.⁶

Analysis

Financial Considerations

The Government presented information that showed Applicant accrued significant delinquent debt totaling at least \$42,000. His debts became delinquent after he bought a house in 2005 and found himself overextended financially. Available information also shows that his expenses exceed his income each month, and that he has a negative cash flow of about \$700. 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*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Available information also requires consideration of the following AG ¶ 20 mitigating conditions:

- (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 cited his 2005 home purchase as the cause of his financial problems. However, he did not show how that event was unforeseen or otherwise beyond his

⁶ See *Egan*; AG ¶ 2(b).

control. He also established that he has been making payments to three of the four debts listed in the SOR. But he did not start making those payments until the second half of 2011, despite the fact that his fiancée has been contributing to the household finances since late 2009. It is likely that his federally-guaranteed student loan is now in good standing because he made the first ten payments and the required monthly payment decreased by more than half. Applicant did not present any updated information to change the fact that he experiences a monthly deficit of more than \$700. It may be reasonable to assume from the absence of new debt that his fiancée's income helps him maintain financial stability. But without supporting information, which Applicant did not provide in the time allowed post-hearing, I am unwilling to rely on such an assumption. Applicant did not meet his burden of presenting information to support any of the AG ¶ 20 mitigating conditions. He has not mitigated the security concerns about his poor financial record.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline 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 payments on his past-due debts, his record of steady employment, and his candor in discussing his financial problems. However, this information is not enough to overcome the security concerns raised by his debts and by his increased negative monthly cash flow. His financial problems are likely to recur. 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.d: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge