



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-05746
)	
)	
Applicant for Security Clearance)	

Appearances

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

10/03/2012

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his personal conduct. But security concerns about his finances remain. His request for a security clearance is denied.

Statement of the Case

On November 30, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required as part of 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 grant Applicant's request for a security clearance.¹ On April 27, 2012, DOHA issued to Applicant 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 for personal conduct (Guideline E) and 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 five exhibits (Gx.), which were admitted, without objection, as Gx. 1 - 5. Applicant testified and proffered four exhibits (Ax.), which were admitted, without objection, as Ax. A - D. I also left the record open after the hearing to receive additional relevant information from the Applicant. The record closed on August 9, 2012, when Department Counsel notified me there was no objection to Applicant's timely post-hearing submissions, which are admitted as Ax. E - K. DOHA received a transcript (Tr.) of the hearing on July 31, 2012.

Findings of Fact

In the SOR, the Government alleged, under Guideline F, that Applicant owed approximately \$2,626 for a state tax lien (SOR 1.a); that he owed \$13,049 for a debt referred for collection (SOR 1.b); and that he owed approximately \$27,200 for a manufactured housing loan referred for collection (SOR 1.c).

The Government further alleged, under Guideline E, that he intentionally made false statements in his November 2010 eQIP by answering "no" to eQIP questions 26.c (*Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?*); 26.f (*Have you defaulted on any type of loan?*); 26.g (*Have you had any bills turned over to a collection agency?*); and 26.n (*Are you currently over 90 days delinquent on any debt(s)?*) (SOR 2.a).

Applicant admitted, with explanations, the allegations at SOR 1.a - 1.c, and denied SOR 2.a. His 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 41 years old and requires a security clearance for his position as a garbage truck driver. The clearance allows access to sensitive areas of a military facility solely to remove waste. He has worked for his employer in various jobs since October 1997. He has been driving a truck for them since 1999. Applicant is a union representative for truck drivers in his company and he enjoys a solid reputation in the workplace for reliability and professionalism. Applicant held a security clearance for his employment from 1997 until 2006, when it was determined his position no longer required a clearance. His current application is a requirement of a new contract between the military and his company. Applicant is a high school graduate. He also has some post-high school course work in electrical engineering. (Gx. 1; Ax. G; Ax. H; Tr. 5, 8, 35 - 36)

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 and his wife have been married since April 2005. Together they are raising her 17-year-old daughter from a previous marriage, and a son from their marriage born in July 2006. Applicant's wife was laid off in May 2005 and was unable to find steady work thereafter because of complications during her pregnancy with their son. She has been completely unable to work outside the home since about August 2010 due to additional medical problems. In March 2012, she applied to the Social Security Administration (SSA) for disability benefits. If her application is approved, she may be entitled to benefits retroactive to August 2010. Applicant and his family are also awaiting the outcome of a lawsuit following the death of his mother due to complications from knee surgery in 2008. (Gx. 1; Gx. 4; Ax. I; Tr. 42 - 45, 71, 78 - 79)

Before he married, Applicant had a girlfriend from 1998 until 2003. She had two small children to care for. At some point, they needed a place to live and Applicant agreed to finance the purchase of a trailer home for his girlfriend, who promised to pay the monthly note of about \$400. The loan was current through sometime in 2005, two years after they split up. The lender notified Applicant that the loan was three months past-due and demanded payment. Applicant was newly married with a teenage stepdaughter and his wife had pregnancy complications. He was unable to bring the loan current and the trailer was repossessed. He acknowledged that his decision to buy his girlfriend the trailer showed poor judgment. As of January 2012, Applicant owed \$25,119 to the creditor listed in SOR 1.c. He recently contacted that creditor to make repayment arrangements, but he admits that he will not be able to satisfy this obligation unless and until he and his wife receive her retroactive SSA benefits or proceeds from the lawsuit from his mother's surgery. (Answer; Gx. 3; Gx. 4; Gx. 5; Tr. 64 - 68)

Applicant bought a car in December 2004. In 2005, the extra expenses that arose when his wife began requiring additional medical care for her pregnancy made it difficult to make his car payments on time. He managed to make his monthly payments, but over several months, he accrued \$350 in additional debt for late fees. Applicant tried to work with the lender, whom he claimed was unwilling to accept any payment, including a refinance of the loan through Applicant's credit union. Applicant averred that the lender would not provide the credit union with a payoff amount. (Gx. 4; Tr. 31 - 32)

In 2006, the car was repossessed. However, under state law where Applicant lives, the creditor was required to notify Applicant within ten days that it intended to seek repayment of any deficiency after resale of the vehicle. Applicant avers that he was never notified about any deficiency obligation. He recently contacted the creditor who now holds this account, but he has not established a repayment plan or otherwise resolved this debt, which is alleged at SOR 1.b. (Gx. 2; Gx. 3; Gx. 4; Tr. 59 - 64, 75 - 78; Ax. J)

When Applicant bought the car in 2004, he did so in a neighboring state. That state charged a 4% sales tax on the purchase. When he registered the car in the state where he lives, he became obligated to pay an additional 3% tax to comport with that state's 7% sales tax. However, he was not notified of that tax obligation. After it went unpaid, the state perfected a lien against him for the debt alleged in SOR 1.a. Applicant was unaware of it until he was interviewed for his clearance in December 2010. In

August 2012, Applicant entered into a repayment with his state's tax bureau to pay \$100 monthly on an adjusted balance of \$1,183. (Gx. 3; Gx. 4; Ax. F; Tr. 32 - 34)

When Applicant submitted his eQIP, he disclosed the repossessions of his ex-girlfriend's trailer home and his car. However, he did not disclose the state tax lien, because he did not yet know about it. He also did not answer yes, as he should have, to the questions specified in SOR 2.a. Applicant either did not understand those questions or answered "no" due to oversight. He also thought that his disclosures of the repossessions were sufficient to place the government on notice of his major financial problems. (Gx. 1; Gx. 4; Tr. 30 - 31)

Applicant's current finances are sound, in that he is meeting all of his regular monthly obligations. He makes just over \$2,000 each month after taxes and other payroll deductions. In addition to the expenses he listed on his monthly budget worksheet (Ax. A), Applicant also is paying off various signature loans he has been using to meet expenses. Applicant's credit history contains numerous personal credit accounts, such as credit cards and signature loans, some of which have been past due or delinquent, but are now satisfied. Applicant has less than \$200 remaining each month after expenses and debt repayments. (Gx. 2; Gx. 3; Gx. 5; Tr. 33 - 35, 81 - 84)

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

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

⁴ Directive. 6.3.

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

Analysis

Financial Considerations

Department Counsel presented information that showed Applicant became delinquent on two repossession debts and a state tax debt. The debts alleged in the SOR total about \$42,875. Applicant has only recently made arrangements to satisfy the debt alleged in SOR 1.a. He is unable to repay the other debts because his personal monthly finances are limited by his income and his other regular obligations. 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*).

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

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The record does not support application of AG ¶ 20(a). Applicant still owes at least the debt at SOR 1.c and has only recently begun repaying his state tax debt. His circumstances have not changed significantly, as his wife is still unable to work and his pay is just barely covering his monthly obligations. AG ¶ 20(b) applies, in part, because Applicant did not know about the state tax lien, and his wife's medical issues are beyond his control. However, his extensive use of personal credit and his inaction, until recently, to try to resolve any of his debts (he first became aware of the tax lien in December 2010, but did not contact the state tax bureau until around the time of his hearing) undermines confidence in his financial judgment. For the same reasons, AG ¶ 20(d) does not apply. His efforts in this regard are too recent to be considered prompt or undertaken independent of this adjudication. Nor does AG ¶ 20(c) apply, as there was no information presented showing Applicant has sought any outside help for his financial problems.

Available information supports application of AG ¶ 20(e) to the debt alleged at SOR 1.b. Applicant was making payments, albeit late, on his car payments. He tried to resolve the loan through refinancing, but the lender was inexplicably uncooperative. Further, state law appears to absolve Applicant of any ongoing obligation for that car loan. SOR 1.b is resolved for Applicant.

In general, however, all of the available information about Applicant's finances presents an unacceptable security risk. Although Applicant downplayed the importance of his clearance, the fact remains that he would have physical access to highly sensitive areas at the military installation where he works. Regardless of the mundane purpose or Applicant's perceived lack of importance of his job, such access requires the same scrutiny as any other clearance adjudication. Applicant has a history of poor financial management and his only solution, at this time, is to rely on large infusion of funds from either SSA or a pending lawsuit. His plan is too speculative to inspire confidence in his

judgment or to conclude that he is not at risk of seeking funds by inappropriate means to resolve his financial problems. He has not mitigated the security concerns raised by his finances.

Personal Conduct

It was alleged in SOR 2.a that Applicant deliberately made false official statements by omitting from his eQIP information about his past-due debts. Available information was sufficient to raise a security concern about Applicant's suitability for clearance. That concern is expressed 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.

To be disqualifying, Applicant must have acted intentionally to hide his financial problems. More specifically, available information must support application of the disqualifying condition at AG ¶ 16(a):

(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.

However, Applicant did not know about the tax lien when he submitted his eQIP, and his disclosure of the two repossessions alleged under Guideline F supports a conclusion that he was not trying to conceal his financial problems. All available information probative of his intent regarding his eQIP answers does not support application of AG ¶ 16(a).

Whole-Person Concept

I have assessed the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, 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). Applicant is a respected union representative who has been a reliable employee for his company for 15 years. He has weathered unforeseen personal problems and may yet be able to resolve the financial issues related to them. However, absent information that shows an ability and a realistic plan to resolve his current debts, Applicant's circumstances present an unacceptable security risk. Available information about Applicant's finances sustains doubts about his suitability for access. Because protection of the national interest is the overriding concern in these adjudications, those doubts must be resolved against the Applicant.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge