



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-03528
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

February 26, 2008

Decision

MALONE, Matthew E., Administrative Judge:

On April 2, 2004, Applicant submitted a Security Clearance Application(SF 86) to request a security clearance 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 make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to give Applicant a security clearance. On August 22, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)² under Guideline E, (personal conduct), Guideline F (financial considerations), and Guideline J (criminal conduct).

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

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on November 19, 2007, and I scheduled a hearing to be held on December 13, 2007. The parties appeared as scheduled. Without objection, I admitted five exhibits offered by the government (Gx. 1 - 5). Applicant testified in his own behalf, and offered three exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - C. DOHA received the transcript (Tr.) on January 2, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's request for a security clearance is denied.

Findings of Fact

Under Guideline F, the government alleged in SOR ¶ 1.a - 1.r that Applicant owes approximately \$28,678.83 in delinquent debts accrued since January 2000. Applicant admitted all of the SOR ¶ 1 allegations. Seven of the listed debts are unpaid medical bills (SOR 1.k - 1.q) totaling \$378 (an average of \$54 each). Another is an unpaid municipal tax bill for \$234 in collection since 2003 (SOR 1.f), and one is a debt referred for collection from a defaulted auto loan for \$19,219.83 (SOR 1.q). The remaining debts are for unpaid credit cards or other consumer credit accounts.

Under Guideline E, the government alleged in SOR 2 that Applicant deliberately falsified his SF 86 by failing to list one of his delinquent debts that was being enforced through an as yet unpaid civil judgment (SOR 2.a); and that he also deliberately failed to list in the same SF 86 that he was, at the time he completed the form, more than 90 days past due on the debts listed in SOR ¶¶ 1.a - 1.f, which were accrued before he completed the SF 86. (SOR 2.b) Applicant also admitted these allegations.

Under Guideline J, the government cross-alleged his false answers from SOR 2 as potential violations of federal law under 18 U.S.C. §1001 (SOR 3.a); that he was arrested in September 2000 and charged with 3rd degree assault and violation of probation from an earlier offense (SOR 3.b); and that he was arrested in January 2002 and charged with risk of injury, breach of the peace, and 3rd degree criminal mischief (SOR 3.c). Applicant admitted the allegations in SOR 3.b and 3.c, but did not provide an answer to SOR 3.a. After a brief discussion at hearing, I entered a denial of this allegation on his behalf. (Tr., 15 - 19) After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 32 years old and employed as a pipefitter by a defense contractor that supports a Navy shipyard. He is a single father of two children, a high school graduate, and is attending company-sponsored courses in industrial management at a nearby community college. Applicant has worked for his current employer since December 2003. Around the time he was hired, he also started working part-time at a retail warehouse to bring in extra money.

Applicant was born and raised in New England, but moved to his current state around August 2003. (Tr., 73) From 1994 until 2002, he worked in a hospital in his home state, but was either unemployed or worked sporadically from about June 2002 until he moved to his current locale.

From 1994 until 2001, Applicant lived with a girlfriend with whom he fathered two children, now ages 12 and 7. In May 2002, he was given primary custody of the children and initially received \$400 in child support from their mother each month. In February 2007, he successfully petitioned for more child support based on the cost of living in his current locale. (Ax. A and B) He now receives \$672 each month in child support. (Tr., 52)

Applicant's relationship with his girlfriend ended acrimoniously. In September 2000, he was arrested and charged with assault after an argument with his girlfriend turned physical. He was given a suspended sentence of one year in jail and placed on probation for two years. (Tr., 61 - 62)

In January 2002, while still on probation, he was arrested and charged with reckless endangerment, breach of the peace, and 3rd degree criminal mischief. After an argument with his then estranged girlfriend, Applicant threw a rock at her car, shattering a window as she drove away with one of their children in the car. He was found guilty of the breach of peace charge, thereby violating his probation. Applicant served four months of a six-month jail sentence, and completed two months of probation. (Tr., 66 - 69)

During their relationship, Applicant and his girlfriend together made about \$5,500 each month. Applicant opened several credit accounts and was able to stay current with them until his girlfriend left in 2001. (Tr., 44 - 45) Thereafter, both before and after he moved, he accrued the delinquencies listed in the SOR. Despite the fact he lives as frugally as possible, he acknowledged he does not have the means to pay his debts (Tr., 80 - 81). He has not taken any action to pay or otherwise resolve them. (Gx. 2; Tr., 44) Despite an increase in income and child support since February 2007 (Ax. C), Applicant still has a negative monthly cash flow of several hundred dollars. (Tr., 51 - 53) He has not sought help from credit counseling services or other financial resources.

When Applicant submitted his SF 86, he answered "no" to question 37, which asked if he had any unpaid judgments against him in the preceding seven years. At the time, there was an unpaid judgment against him in favor of the Capitol One credit card company for a \$927 delinquency. The judgment had been entered in November 2003, about three months after he moved to his current state. Applicant's explanation that he did not know about the judgment when he submitted the SF 86 (Tr., 60) is plausible.

In response to question 38, which asked if, in the preceding seven years, he had ever been more than 180 days delinquent on any debt, he answered "yes" and listed one unpaid credit card debt for \$976. Applicant then answered "no" to question 39, which asked if he was, at the time he submitted the SF 86, more than 90 days past due on any debt. Applicant asserted that he was told simply to list whatever debts he was aware of. (Tr., 60)

The unpaid medical bills listed in SOR ¶¶ 1.k - 1.q were incurred for emergency room treatments for one of his children, who has allergies that arise on the spring and fall. The amounts owed represent the remainder above his medical insurance coverage. (Tr., 79) The \$19,219 debt listed in SOR ¶ 1.r was a loan for a motorcycle he and his

ex-girlfriend purchased. She has the bike and he still owes about \$5,000 for his portion of the loan. (Tr., 82)

Applicant moved away from his home state to make a fresh start. He is trying to be a good father for his children and to improve his station in life. The community college courses his employer is paying for will, hopefully, help him advance in his profession so that he may be better able to resolve his financial problems and provide for his children.

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 Revised Adjudicative Guidelines (AG).³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines.⁴ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. 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. In this case, the pleadings and the information presented by the parties at hearing require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations) at AG ¶ 18, Guideline E (personal conduct) at AG ¶ 15, and Guideline J (criminal conduct) at AG ¶ 30.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁵ 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 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.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the

³ Directive. 6.3.

⁴ Commonly referred to as the "whole person" concept, these 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.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

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.⁷

Analysis

Financial Considerations.

Under Guideline F, “[f]ailure 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.” (AG ¶ 18) The government’s exhibits, along with Applicant’s admissions and testimony, are sufficient to support the SOR allegations. Since about 2002, Applicant has accrued significant unpaid debts consisting of credit cards, a municipal tax bill, an auto loan, telephone and television accounts, and several unpaid medical bills. Before he moved in 2003, his debts were the result of his overuse of personal credit, which he was unable to pay back after he no longer had his girlfriend’s income to use. His debts, which total between \$14,000 and \$28,000 (depending on how much he actually owes on the motorcycle), have not been paid or otherwise resolved. Applicant lacks the means to resolve them as he has a significant negative monthly cash flow and has not enlisted any outside help to overcome his financial problems.

These facts require consideration of the disqualifying conditions listed in AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*), 19(c) (*a history of not meeting financial obligations*), and 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*). Because there is no record of repayment or other action to resolve his debts, and because his financial problems are prolonged by his current lack of sufficient income to meet his monthly expenses, much less pay off his past debts, none of the mitigating conditions listed in AG ¶ 20 may be considered based on this record. Applicant has not mitigated the government’s security concerns about his financial problems.

Personal Conduct.

The security concern about Applicant’s personal conduct, as expressed in AG ¶ 15, is that “[c]onduct 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.” The government presented sufficient information to show that Applicant’s answers to SF 86 questions 37 (unpaid judgments) and 39 (debts more than 90 days past due) were incorrect. As to question 37, Applicant had moved out the state where he incurred the debt underlying that judgment three months before it was entered. I accept his

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

explanation that he was unaware of the judgment when he answered question 37, and I resolve SOR ¶ 3.b in his favor.

As to question 39, Applicant knew in April 2004 that he had debts but asserted did not know their full extent. SOR ¶ 3.c cites the debts listed in SOR ¶¶ 1.a - 1.f as those debts he knew or should have known were more than 90 days past due when he completed the SF 86 in April 2004. However, as discussed above, the debt in SOR ¶ 1.e was the judgment at issue in SOR ¶ 3.b. The debt in SOR ¶ 1.f also appears to have gone to collection after Applicant moved in August 2003. However, the debts in SOR ¶¶ 1.a - 1.d were delinquent for between one and three years before Applicant moved. While SOR ¶ 1.a is only a \$66 debt, the other three are each significant debts, together totaling nearly \$6,000. It is untenable for Applicant to claim he did not know about these delinquencies. The fact he disclosed a single debt (not listed in the SOR) in response to question 38 (debts more than 180 days delinquent) might, under some circumstances, be insufficient to put the government on notice of his financial problems. However, given the extent of his financial problems even before he moved in August 2003, he should have at least answered "yes" and provided some information about the other debts. The totality of the available information bearing on the issue of Applicant's intent at the time he answered SF 86 question 39 shows he deliberately withheld relevant information about his debts as alleged in SOR ¶ 3.c.

These facts require consideration of the disqualifying conditions listed in 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*). Further, of the mitigating conditions listed in AG ¶ 17, the record supports consideration of AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) (emphasis added). Applicant submitted his SF 86 more than three years ago, and this is the only known instance of dishonesty in his background. Since then, he has worked without incident for his employer while doing his best to start over. On balance, the security concerns arising from his deliberate false statements about his debts are mitigated.

Criminal Conduct.

Under Guideline J, "[c]riminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." (AG ¶ 30) The government's exhibits, along with Applicant's admissions and testimony, are sufficient to support the SOR allegations in SOR ¶¶ 3.b and 3.c. Applicant was arrested for and convicted of assaulting his ex-girlfriend during an argument in September 2000. In 2003, while he was still on probation from that conviction, he was convicted of breach of the peace after he threw a rock through her car window after an argument. For that offense, he served four months of a six month jail sentence. Because of the passage of time since those offenses, Applicant's criminal conduct would not likely be an issue in this case.

However, the government also showed that Applicant deliberately made a false statement to the government when he withheld information about his debts by answering “no” to SF 86 question 39. When Applicant signed his SF 86, he certified his answers were true, and he so certified having been advised that to “knowingly and willfully make a false statement on [the SF 86] can be punished by fine or imprisonment or both.” (Gx. 1)

These facts require consideration of the disqualifying condition listed in AG ¶¶ 31(a) (*a single serious crime or multiple lesser offenses*) and 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*). Of the mitigating conditions listed in AG 32, I have considered AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) would be available to Applicant. As to his two arrests, Applicant’s circumstances have completely changed. Aside from negotiating child visitation and support issues with his ex-girlfriend, he has no contact with her. As to the criminal conduct associated with his falsification of his SF 86, for the same reasons discussed under Guideline E, above, I conclude he is unlikely to engage in criminal conduct in the future, and the security concerns under this guideline are mitigated

Whole Person Concept.

I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guidelines E, F, and J. I have also reviewed the record before me in the context of the whole person factors listed in ¶ AG 2(a).⁸ Applicant is a mature adult, and a responsible single father of two. He is trying to improve his personal and professional circumstances and is progressing toward his goals. For those reasons, the personal conduct and criminal conduct concerns are no longer a security concern. Nonetheless, his financial problems are significant and were brought about by his own poor judgement. Applicant continues to struggle with debt and his routine expenses, and he has not incurred new delinquencies. However, despite his best intentions to resolve these matters in the near future, the facts about Applicant’s finances present an unacceptable risk to the national interest were he to be granted access to classified information at this time. Without tangible signs of payment or other resolution of his debts, a fair and commonsense assessment⁹ of all of the information bearing on Applicant’s finances shows there are still doubts about his ability to protect the government’s interests as his own. The protection of the national interest is paramount in these determinations, and such doubts must be resolved in favor of the national interest.¹⁰

⁸ See footnote 4, *supra*.

⁹ See footnote 3, *supra*.

¹⁰ See footnote 7, *supra*.

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
Subparagraph 1.a - 1.r:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a - 2.b:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a - 3.c:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge