

DATE: November 19, 2007

In Re:)
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 -----) ISCR Case No. 07-01689
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

Alison O'Connell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns raised by Applicant's financial problems are mitigated by recent actions to pay or resolve his debts. However, he was unable to mitigate security concerns about a lengthy record of arrests for assault and restraining order violations. Clearance is denied.

STATEMENT OF THE CASE

On October 19, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance needed for his current 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 June 29, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Revised Adjudicative Guidelines² under Guideline F (financial considerations) and Guideline J (criminal conduct).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on September 4, 2007, and I convened a hearing on September 25, 2007, at which the parties appeared as scheduled. Without objection, I admitted 11 exhibits offered by the government (Gx. 1- 11). Applicant testified in his own behalf, and offered five exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - E. I also left the record open to receive additional information from Applicant. The record closed on October 3, 2007, when I received Applicant's post-hearing submission, which I admitted without objection as Ax. F. DOHA received the transcript (Tr.) the same day.

FINDINGS OF FACT

In response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 2.a, 2.b, and 2.e - 2.j. His admissions are incorporated herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 45 years old and requires a security clearance for his work for a defense contractor as a security guard at a classified government facility. In 1981, Applicant enlisted in the Army National Guard, but transferred to active enlisted duty in the United States Navy later that year. In February 2002, he retired from active duty as a petty officer first class (paygrade E-6). At the time of his discharge, he had several medical problems, including diabetes, for which he receives a 40% disability payment in addition to his retirement pay.

After leaving the Navy in 2002, Applicant enrolled in training for long-distance truckers. He worked for a trucking company from July 2002 until December 2002, when he was forced to leave his job. His diabetes had worsened to the point where he had to take insulin injections, a condition that made it unsafe to drive long distances. From 2003 until May 2004, Applicant held a variety of full- and part-time jobs, but he was unemployed between December 2002 and May 2003, between July 2003 and October 2003, and between September 2006 and November 2006. (Gx. 1) He was

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.

hired for his current job in October 2006, but did not actually start working there until December 2006.

Applicant's tuition for his truck driving school was paid directly out of his paycheck as long as he worked for the company that ran the school. When he lost his job due to illness, he was unable to keep up with the payments. As alleged in SOR ¶ 1.c, by March 2007, he owed the school about \$7,800 in unpaid tuition and interest. However, he reached an agreement with the collection agency to whom the debt was referred, whereby he has been paying \$200 each month since May 2006. (Ax. F)

Also as a result of his loss of income, Applicant was unable to meet his monthly mortgage payments. In July 2004, as alleged in SOR ¶ 1.f, his \$123,000 mortgage was foreclosed and he lost his house. In September 2004, the house was subsequently sold by the bank for \$226,000. Applicant and his second ex-wife received proceeds from the sale. Applicant owes nothing on this debt and his VA home loan eligibility has been restored. However, the foreclosure still appears on his credit history report. (Answer to SOR; Ax. B)

In 2005, Applicant also became delinquent on his homeowners' association dues. As alleged in SOR ¶ 1.b, the association obtained a civil judgment against Applicant to collect a \$267 debt. This debt was paid in full as of April 2007. (Ax. E)

Applicant's financial problems caused him to seek Chapter 13 bankruptcy protection in June 2003. He declared approximately \$19,000 in debts to be paid over 45 months at \$423 each month. However, as alleged in SOR ¶ 1.a, by September 2004, Applicant had not yet found steady work, and the bankruptcy was dismissed for non-payment.

Applicant has been married twice. Both marriages ended in divorce. He was married to his first wife from April 1984 until November 1997. His second marriage lasted from August 1998 until July 2004, however, they had separated in July 2002. Applicant has two children by women to whom he was never married. His oldest child was born in 1992, while he was married to his first wife. Another child was born in February 1999, after Applicant married his second wife. He did not know of the child until January 2005, when a blood test identified him as the child's father. On or about October 19, 2005, he was ordered to pay \$514.60 each month for child support. Because the order was retroactive to the date he was identified as the father, he was ordered to pay an additional \$109.50 each month to make up the arrearage. The child and his mother live in a different state than Applicant. Applicant has paid each month as required to the state where he lives, but the child's state has reported him as delinquent in paying the support. Despite the SOR ¶¶ 1.d and 1.e allegations that Applicant is late in paying two different child support orders, he is only subject to one order and he has paid it each month as ordered. As of the hearing, the arrearage had been reduced to about \$360. (Ax. D)

Both of Applicant's marriages were contentious. Several times, arguments with his wives turned physical and Applicant was arrested and/or charged with assault or assault and battery at least eight times between 1984 and 2002. Applicant claims he was subject to criminal prosecution solely because his wives would file baseless charges against him after one of their many arguments.

Most of Applicant's arrests occurred during his first marriage. As alleged in SOR ¶ 2.a, he was charged with assault in June 1984 after an argument with his wife. That charge was entered as nolle prosequi. As alleged in SOR ¶ 2.b, he was charged with assault in October 1984 after an argument with his wife. That charge was later dismissed. As alleged in SOR ¶ 2.c, he was charged with three counts of assault and one count of disorderly conduct in November 1984, after an argument with his wife. The assault charges stemmed from his actions while resisting arrest by police officers called to his house. At trial, he was acquitted of the assault charges, but convicted of disorderly conduct and fined. As alleged in SOR ¶ 2.d, Applicant was charged with assault in September 1986, but that charge was entered as nolle prosequi. In April 1991 and July 1991, as alleged in SOR ¶¶ 2.e and 2.f, respectively, he was charged with assault and battery on his first wife. He was convicted of and given a suspended 30-day jail sentence for each offense. Finally, in August 1992, as alleged in SOR ¶ 2.g, Applicant and his wife got into another fight during which he assaulted her and took her car keys. He was acquitted of a petit larceny charge, but convicted of assault and battery. (Gx. 6 - 8)

Applicant has denied that he did anything to his first wife other than grab her to keep her from hitting or pushing him. However, a 1994 written statement he gave as part of a subject interview with the Defense Investigative Service during an earlier background investigation, he acknowledged his wife twice went to the hospital after they fought – once for a broken nose and once after his knee hit her in the eye. (Gx. 9)

In June 2002, an argument between Applicant and his second wife escalated into physical violence. The couple separated in July 2002 after she filed a charge against him of assault and battery on a family member. As alleged in SOR ¶ 2.h, Applicant was convicted and sentenced to 30 days in jail, which was apparently suspended. In connection with this incident, Applicant was ordered to have no contact with Applicant. However, in November 2002, he sent his estranged second wife a letter while he was on the road. This constituted a violation of the no contact order, for which, as alleged in SOR ¶ 2.i, he was charged and convicted of a misdemeanor violation of a protective order. He was given a six-month suspended jail sentence. As alleged in SOR ¶ 2.j, in April 2003, Applicant was arrested after he sent his second wife a Valentine's Day card, another violation of the no-contact order. This time, he was sentenced to 30 days in jail and fined \$125. (Gx. 1 and 8)

In June 1993, Applicant referred himself to psychiatric care at a Naval hospital because he feared he was losing control and had thought of killing his wife. Records of the treatment refer to his history of spousal abuse and an incident in the previous year when he severely beat her after finding her in bed with another man. After a weekend of observation and evaluation, Applicant was diagnosed with an adjustment disorder and borderline narcissistic or dependent traits. He and his wife were referred to marital counseling and Applicant continued to receive counseling for stress management. Applicant and his first wife also attended several court-ordered counseling sessions as a condition of dismissals or suspended jail sentences. (Gx. 10)

Applicant served honorably in the Navy. Samples of his enlisted performance evaluations reflects above-average to superior performance in various assignments. (Ax. A)

POLICIES AND BURDEN OF PROOF

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.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 that the security concerns addressed in Revised Adjudicative Guideline F (financial considerations) and Guideline J (criminal conduct) be applied.

_____ 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 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

CONCLUSIONS

Financial Consideration. 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

³ Directive. 6.3.

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

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

who is financially overextended is at risk of having to engage in illegal acts to generate funds.”⁸ The government presented sufficient information to support the allegations of delinquent debt in the SOR. Available information shows Applicant failed to meet his repayment obligations through his 2003 Chapter 13 bankruptcy (SOR ¶ 1.a), that he failed to pay his homeowners association dues resulting in a civil judgement against him (SOR ¶ 1.b), and that he became delinquent on the tuition for his truck. (SOR ¶ 1.c) The record further shows Applicant was listed as being in arrears on monthly child support payments in two different states (SOR ¶¶ 1.d and 1.e), and that his \$123,000 mortgage was foreclosed. (SOR ¶ 1.f) The foregoing requires consideration of Guideline F disqualifying conditions 19(a)⁹ and 19(c).¹⁰

The record also requires consideration of Guideline F mitigating conditions 20(a)¹¹ and 20(b).¹² After leaving the Navy in 2002, Applicant had found work as a truck driver but was unable to pay his tuition because he lost his job due to illness. Unemployment and under employment over the next two years left him unable to keep up with several debts and he filed for bankruptcy protection. However, his employment prospects continued to hamper his obligations under the petition. However, Applicant presented sufficient information to show he has paid the homeowners association judgment (Ax. E), that he has been repaying the tuition debt since before the SOR was issued (Ax. C and F), and that there was no debt remaining after the foreclosure of his mortgage (Ax. B). As to his child support obligations, the information he submitted shows there is only one state to which he is paying support, and the only reason he had an arrearage was because about 10 months elapsed between the paternity test results and a court order was issued defining Applicant’s obligation. He has never missed a payment and the arrearage in question is nearly paid off.

Available information shows Applicant’s financial problems were due largely to circumstances beyond his control and that he has made sufficient progress in paying or otherwise resolving his debts. It is unlikely he will incur such delinquencies in the future, and I resolve this guideline for the Applicant.

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.”¹³ The government presented sufficient information to support the allegations that he was arrested and charged with criminal offenses ten times between 1984 and 2003 as alleged in SOR ¶¶ 1.a through 1.j. The government’s information,

⁸ Revised Adjudicative Guidelines, ¶ 18.

⁹ “a history of not meeting financial obligations;”

¹⁰ “inability or unwillingness to satisfy debts;”

¹¹ “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;”

¹² “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;”

¹³ Revised Adjudicative Guidelines, ¶ 30.

along with Applicant's admissions, further showed Applicant was convicted of criminal charges after three of those arrests, as alleged in SOR ¶¶ 1.c, and 1.e through 1.j. As a result of his arrests in 2002 and 2003 for violating terms of his sentence for a July 2002 assault on his second wife, Applicant spent 30 days in jail. All of the foregoing requires consideration Guideline J disqualifying condition (DC) 31(a)¹⁴ and DC 31(c).¹⁵

By way of mitigation, Applicant failed to meet his burden of showing the available information about his criminal conduct is no longer of security concern. He has not been involved in criminal conduct since 2003. However, his record of such behavior spans two marriages over 20 years and includes a similar offense as a juvenile.¹⁶ Under other circumstances, four years of good conduct may be sufficient to show rehabilitation and to indicate he may not engage in such conduct in the future. But given the length of time over which the conduct occurred, and the fact Applicant has yet to acknowledge his wrongdoing and accept responsibility for his actions,¹⁷ there is no support for consideration of Guideline J mitigating condition 32(a)¹⁸ or 32(d).¹⁹ I conclude this guideline against the Applicant.

Whole Person. I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guidelines F and J. I have also reviewed the record before me in the context of the whole person factors listed in section 2(a) of the Revised Adjudicative Guidelines.²⁰ I place great emphasis on the fact that Applicant served his country for over 20 years. However, there is no other information available regarding his work record since leaving the military. I have also considered the adverse circumstances presented by his illness and employment difficulties. Applicant is a mature adult with significant life experience. To his credit, he responsibly addressed his financial problems; but his tendency to resort to physical violence to resolve personal disputes is a well-documented lifelong problem that casts doubt on his judgment and willingness or ability to follow rules and abide by basic norms of social behavior. Appellant presented no information to suggest his conduct has been addressed sufficiently so that it will not

¹⁴ “ a single serious crime or multiple lesser offenses;”

¹⁵ “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;”

¹⁶ Although not alleged in the SOR, Applicant was arrested and charged with assault and battery of his girlfriend when he was 16 years old. (Gx. 9) This information is relevant to the entire record of Applicant's criminal conduct.

¹⁷ Applicant repeatedly claimed his wives misrepresented what happened and that he did not intentionally hurt his either wife. I did not believe his claims in this regard, especially in view of the contents of Gx. 9 and 10, which show that, despite his claims to the contrary, Applicant injured his first wife by assaulting her at least twice.

¹⁸ “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;”

¹⁹ “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.”

²⁰ See footnote 4, *supra*.

recur. Indeed, his lack of insight into his conduct and his continued minimization of his conduct serve only to buttress the government's doubts about his judgment. Such doubts must be resolved in favor of the national security.²¹ A fair and commonsense assessment²² of all available information before me shows that the Applicant has not yet overcome the government's reasonable doubts about his ability to protect classified information and to exercise the requisite good judgment and discretion expected of one who holds a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial Considerations):	FOR THE APPLICANT
Subparagraph 1.a - 1.f:	For the Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST THE APPLICANT
Subparagraph 2.a - 2.j:	Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone
Administrative Judge

²¹ See footnote 7, *supra*.

²² See footnote 3, *supra*.