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Help me regain my Security Clearance

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9.0--Miscellaneous

Q: I am a Reservist and work for a Government contractor. Last year, I received a Statement of Reasons (SOR) from the Defense Office of Hearings and Appeals (DOHA) concerning my financial situation. After hearing, an administrative judge found it not clearly consistent with national security to continue my clearance. I now have reapplied for the clearance. A clearance would increase my income quite a bit. DOHA now wants evidence showing whether reasons in the SOR cited to deny me security eligibility have been rectified or sufficiently mitigated to warrant possible reversal of the previous decision denying me a security clearance. The financial situation is I have ten debts, including mortgages, totaling almost \$1,000,000. My wife and I had rental properties. We also purchased a new residence before I went on Active Duty (AD). I returned from AD to the real estate market downturn. My spouse temporarily lost her job. We also lost a tenant and that rental income. We did a short sale on property. I went to hearing without an attorney. I enclose my transcript and exhibits and the decision of the administrative judge. What do you think?

A: The next time see me when you suspect you may have a security clearance problem, not after hearing. Persons with a \$1 million debt and short sales can keep their clearances. I have seen Reservists come off AD to a bad economy or get transferred without being able to rent or sell their residence.

Your record, however, lacks needed information. The Government applies adjudicative guidelines (AG) to clearance cases. Here, DOHA applied DoD Directive 5220.6, as amended, with the Revised Adjudicative Guidelines (AG). The security concerns for you are based on: "AG 19(a) inability or unwillingness to satisfy debts" and "AG 19(c) a history of not meeting financial obligations." Your administrative judge balanced against AG 19 mitigating considerations of the economic downturn, your financial counseling, and that you budgeted to pay creditors. E.g., AG 20 (b) (conditions beyond your control), (c) counseling for the problem), & AG 20(d) (good faith efforts to pay creditors). He also looked at you, as a whole person. AG 2, and DOHA decisions he cites. The administrative judge saw that you exhibited some responsibility, rehabilitation, and mitigation. However, he was required to err on the side of national security, resolving doubts against you. Executive Order 10865. He found the security concerns about you were not sufficiently alleviated.

Now, a year later, DOHA is looking to whether you have remedied the financial situation or alleviated, reduced, abated, or diminished the problem. The final decision does not concern your loyalty. It is ultimately a prediction based on available evidence whether you are a future risk, resolving all doubts in favor of national security. Accordingly, you need to present additional evidence, knowing that DOHA will make a common sense decision applying the adjudicative factors and common sense to all available, reliable information about you, past and present, favorable and unfavorable. Accordingly, you need to present additional evidence to rectify doubts about you.

In this regard, these adjudicative guidelines are not inflexible. They are applied in conjunction with an evaluation of the whole person, the same as the judge did here. The administrative judge could not find (and I still cannot find) important information in your record. For example, you need to explain what has been done under your consolidation agreement of six of your debts. You released ownership in one property as a short sale transaction, but provided no evidence of how you fell so far behind in the first place. You had \$50,000 in stocks, bonds, and

savings. You need to explain how these assets are used to pay the listed creditors, or why not. You have a large family. How did, and do, you balance these obligations against paying the listed creditors? That answer, if documented, may help you because DOHA is looking not only for your responsible handling of debt but also acceptance of responsibility and overall reliability, trustworthiness, and good judgment when faced with difficult times.

Under Executive Order, DOHA or any other adjudicator will resolve any doubts in favor of national security. You need to remove those doubts with evidence, not promises or good intentions. Each case and person is different and a security adjudicator makes a common sense decision based on considerations of all available, reliable information about you, past and present, favorable and unfavorable. If you consider what I wrote above against the record, you will see that this particular judge left several hints in his decision how you could do better. When you provide additional evidence, help him find for you.

** This question and answer is not an actual person to protect privacy. However it is a compilation of actual clients and an actual DOHA decision. Legal considerations included Department of Navy v. Egan, 484 U.S. 518 (1988), Executive Order 10865, Safeguarding Classified Information Within Industry, dated February 20, 1960, as amended; DoD Directive 5220.6 containing the Revised Adjudicative Guidelines effective for any case with the SOR dated on or after September 1, 2006. The DoD Directive, as amended, reflects the Stephen J. Hadley, Assistant to the President for National Security Affairs December 29, 2005 Memorandum with Presidential Adjudicative Guidelines for Determining Eligibility for Access to Classified Information.

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