



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06001

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

01/28/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his finances. Eligibility for access to classified information is denied.

History of the Case

On April 28, 2015, Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 2, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on September 29, 2015, and responded to the FORM within the time permitted with a documented retainer agreement with his bankruptcy attorney and an accompanying statement of intent to petition for Chapter 13 bankruptcy relief. Applicant's submission was admitted as Item 6. The case was assigned to me on November 2, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four debts exceeding \$28,000, with two of the debts related to delinquent mortgages of \$208,979 and \$74,231, respectively. Allegedly, each of the listed delinquent debts remain outstanding.

In his response to the SOR, he did not dispute any of the listed debts and provided explanations as to how he and his wife fell behind with their debts while Applicant was in short term disability status from surgical procedures. Applicant claimed that he applied for and received short term disability benefits for nine weeks between July 2012 and September 2012. He claimed he could not work out a deferred payment plan with his homeowners association to avert foreclosure. And he claimed advice from his bankruptcy attorney to defer petitioning for Chapter 13 bankruptcy relief until after mid-2015.

Findings of Fact

Applicant is a 54-year-old implementation manager for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in June 1989, divorced in May 1995, and has one stepchild from this marriage. (Item 2) He remarried in October 1997. (Items 1-3) Applicant has no children from this marriage. Applicant enlisted in the Navy in November 1981 and served 22 years of active duty. (Items 2-4) He earned his high school diploma in August 1979 and claimed no post-high school education. Applicant has been employed by his current employer since 2004. (Items 2-3) He works part time with a local firm.

Finances

Applicant and his first wife purchased a town home in April 1998 and financed their purchase with a \$199,920 first mortgage. (Items 4-5) Records show he purchased a new home in April 2005 for \$245,000. (Items 4-5) In February 2007, he obtained a second mortgage on the new home with the same lender for \$85,000. (Item 5) After purchasing his second home, he retained the town home he purchased in 1998.

Following Applicant's unsuccessful efforts to persuade his homeowners' association to defer homeowners' fees until his household income improved, his homeowners' association foreclosed on his town home in June 2013. (Item 1) Whether the association completed foreclosure proceedings is uncertain.

Applicant is also listed as past due on his first and second mortgages with the same listed creditor (creditors 1.a and 1.b) on his primary residence. He is listed as past due in the amount of \$5,142 on the first mortgage and \$4,343 on the second mortgage. (Items 4 and 5) Applicant has not paid anything on either of these accounts since vacating the home in June 2013. While the lender has since started foreclosure proceedings, it is not clear whether it completed them on either mortgage. (Items 3-5)

Besides his mortgage and home owner's debts, Applicant accrued two consumer debts: one with creditor 1.c for \$14,872 and one with creditor 1.d for \$4,165. (Items 4-5) Both debts remain outstanding and unaddressed.

In his post-FORM submission, Applicant expressed his intention to petition for Chapter 13 relief in October 2015 and attached a copy of a retainer agreement with his bankruptcy attorney. (Item 6) To date, Applicant has not provided any follow-up materials covering the petition, schedules, the court's approved plan, and the final discharge. Moreover, he did not provide any evidence of financial counseling or budgeting.

Endorsements

Applicant provided no character references on his behalf, either with his answer or with his response to the FORM. Nor did he furnish any performance evaluations or evidence of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of

the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or

maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a fully employed implementation manager for a defense contractor who accumulated delinquent debts exceeding \$28,000. Two of the listed debts (creditors 1.c and 1.d) are charged off with no evidence of their being addressed by Applicant. The remaining two creditors involve first and second mortgages with the same creditor (i.e., creditors 1.a and 1.b). The record evidence confirms that Applicant has made no payments on either mortgage since he vacated the home in 2013. Whether the lender has completed foreclosure proceedings is unclear.

Applicant’s collective accumulation of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶19(c), “a history of not meeting financial obligation,” apply to Applicant’s situation.

Applicant’s pleading admissions with respect to his accumulation of unaddressed delinquent debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s listed filing lapses and debts are fully documented in his credit reports. Some judgment problems persist over Applicant’s insufficiently explained accrual of mortgage debts with his principal lender and other consumer creditors. To date, he has taken insufficient corrective steps to resolve his delinquencies and demonstrate he acted responsibly in addressing his listed debts. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder’s duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Inferentially, Applicant's delinquent debts are attributable for the most part to income shortages and lapses in judgment in the management of his properties. Without more information from Applicant about his debt delinquencies and the status of any delinquencies on his mortgages, more detailed assessments cannot be made. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve her debts. Partially available to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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."

What is not clear from this developed record are the specifics of Applicant's dispute with his home owners association that purportedly triggered not only foreclosure initiation by his association, but his falling behind with his mortgages on his personal residence and accruing his delinquencies with his two other listed creditors. Without documentation of financial counseling and specific steps he has taken to address his past-due debts, mitigation credit is not available to Applicant based on the evidence developed in the record.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent mortgage and consumer debts and failure to resolve them. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances.

While unanticipated financial burdens might have played a considerable role in his failures to address his delinquent debts, Applicant failed to provide more specific explanatory material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her overall clearance eligibility, but were not provided.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his lapses in judgment associated with his accumulation of mortgage and consumer debts

Taking into account all of the documented facts and circumstances surrounding Applicant's accrual of delinquent mortgage and other consumer debt accumulations and his lack of more specific explanations for his debt accruals and lack of documented resolution of them, it is still too soon to make safe predictions of Applicant's ability to satisfactorily resolve his debts.

More time is needed to facilitate's Applicant's making the necessary progress with his creditors to facilitate conclusions that his finances are sufficiently stabilized to permit him access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.d.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a through 1.d:

Against Applicant

Conclusions

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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

