



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-04980

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se*

10/01/2014

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

**Statement of Case**

On April 22, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for 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 DoD on September 1, 2006.

Applicant responded to the SOR on May 16, 2014, and requested a hearing. The case was assigned to me on June 26, 2014, and was scheduled for hearing on July 22, 2014. At hearing, the Government's case consisted of nine exhibits (GEs 1-9). Applicant relied on one witness (himself) and six exhibits (AEs A-F). The transcript (Tr.) was received on July 31, 2014.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with a spread sheet covering his Chapter 13 payments to the bankruptcy trustee. (Tr. 87-89) For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded additional time to August 5, 2014 to respond.

Applicant did not supplement the record. In August 2014. Within the time requested, Applicant advised that he was ending his employment with his defense contractor employer and taking a position with the Navy. Applicant's updated employment submission is admitted as AE G. His change of positions does not alter the jurisdictional status of the proceeding. Once a hearing has commenced, jurisdiction is retained to complete the hearing and issue a decision. See Directive, Sec. 4.4.1.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 13 relief in February 2011, scheduling \$663,672 in liabilities; (b) accumulated eight consumer debts exceeding \$9,000 since petitioning for Chapter 13 bankruptcy protection; © is indebted on an educational loan in the amount of \$38,867; and (d) is indebted for federal taxes for tax years 2008-2010 in the amount of \$13,660.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed he has maintained a Top Secret/Sensitive Compartmented Information (TS/SCI) clearance since 1992 and has never been questioned about his ability to protect classified information. He claimed his financial situation is poor and has been "building for years."

Applicant further claimed he filed for Chapter 13 bankruptcy protection in February 2011 and attributed his financial problems to his failure to deal with his undiagnosed depression and non-admitted alcoholism, which he has since effectively addressed. And he claimed he has been paying off other debts not included in either the SOR or his bankruptcy petition at the rate of \$1,000 a month, and will move his resources to the debts alleged in the SOR as he pays off these other debts.

### **Findings of Fact**

Applicant is a 46-year-old former program manager for a defense contractor who seeks a security clearance. (GE 1; Tr. 61) The allegations covered in the SOR and

admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

## **Background**

Applicant married his first spouse in October 1990 and divorced her in January 1998. (GE 1) He has two adult children from this marriage. (GE 1) He married his current spouse in February 2000 and has two children and one adult step-child from this marriage. (GE 1; Tr.85)

Applicant earned a bachelor's degree from a service academy in May 1990 and a master's degree from a recognized university in May 1997. (GE 1; Tr. 86) He completed 11 years of active duty in the Navy as a commissioned naval officer and received an honorable discharge in September 2011. (GE 1; Tr. 64)

## **Applicant's finances**

Applicant purchased his current house in early 2001 for about \$180,000 and financed his purchase with a \$153,000 first trust deed that carried monthly payments of \$1,800. (GEs 5 and 9; Tr. 61-63, 70-73) He refinanced his first mortgage in February 2002 with a \$198,432 first mortgage that established monthly payments of \$2,200. (GE 5; Tr. 73-74) and added a \$60,000 second mortgage in November 2002. (GE 5)

Records reflect the creation of a \$266,502 first mortgage with another lender in February 2004. (GE 5). Whether the recorded mortgage was the result of an assignment or the creation of a third refinancing of Applicant's residence is unclear. (GE 5; Tr. 75-76) Applicant's credit reports also reveal a \$310,175 first mortgage with still another lender in August 2004. (GE 5) It is not clear whether this recorded mortgage is the result of a mortgage assignment or a new loan arranged by Applicant on his residence.

In November 2005, Applicant refinanced his home mortgage for at least the third time with a \$362,176 adjustable first mortgage and an \$89,600 fixed second mortgage to create an aggregate mortgage debt in excess of \$450,000. (GE 5; Tr. 76-77) Monthly payment terms on this new first mortgage were \$2,200 a month and a little over \$800 a month on the second mortgage. (GE 5; Tr. 76) When the adjustable rate on the first mortgage adjusted years later, Applicant's combined monthly payments on both mortgages increased to around \$4,400 a month. (GE 8; Tr. 76-77) Credit reports reveal that these two mortgages were sold to another lender in March 2010. (GEs 5 and 9)

Between 1998 and 2011, Applicant accumulated other consumer debts, some secured and some not. (GEs 5 and 9) Many of these consumer accounts became delinquent. Besides his consumer debts, Applicant's credit reports indicate he accrued \$38,867 in government-guaranteed student loans in 2006 and \$13,660 in federal taxes for the 2008-2010 tax years. (GEs 5, 7, and 9)

By early 2010, Applicant began falling behind with his bills. Applicant attributes his financial troubles to “carelessness and irresponsibility.” (GE 7) Excessive spending by himself and his wife were the chief factors in his accruing of so much debt. (GEs 5, 7, and 9; Tr. 68-69) His excessive debts prompted difficult choices over what creditors to prioritize. (GEs 7 and 8) In hindsight, he made poor financial decisions.

Unable to address his rising debt load (especially his mortgages), Applicant petitioned for Chapter 13 bankruptcy relief in February 2011, while still on active-duty status with the Navy. (GEs 3 and 8; Tr. 64, 77-79) He scheduled \$529,214 in secured debts, which are comprised of his first and second trust deeds on his home, real estate taxes owed on his residence, a first deed of trust on a timeshare property in another state, furniture, and two vehicles. (GE 3; Tr. 79-81)

Additionally, Applicant, scheduled \$13,829 in unsecured priority claims, consisting of personal property taxes and federal taxes. (GE 3; Tr. 81-83) Finally, he scheduled \$120,628 in unsecured non-priority claims, which are comprised of education loans, bank loans, service accounts, credit card accounts, and medical accounts. (GE 3) Altogether, Applicant scheduled \$663,672 in debts and \$413,566 in listed assets. (GE 3; Tr. 63) Applicant’s amended modified Chapter 13 plan was confirmed in March 2014. (GE 2)

Since filing his Chapter 13 petition, Applicant has made monthly payments of \$2,525 to the Chapter 13 trustee; his aggregate payments to date exceed \$90,000, and he is current with his mortgage lender. (GE 8 and AEs B and C; Tr. 63) Applicant expects to complete his Chapter 13 plan by March 2016. (Tr. 55) Once he completes his plan, he will use the funds he has allocated to his Chapter 13 plan to pay the delinquent debts listed in the SOR, eight in all exceeding \$9,000. (Tr. 54-57) Currently, Applicant intends to hold onto his house, which is worth less than the debts owed on his mortgages. (Tr. 54, 62, 84-85)

Besides the debts covered in the SOR, Applicant is indebted on a \$22,100 promissory note he executed for his sister-in-law in April 2013. (AE E; Tr. 41-42) The note calls for monthly payments of \$500 to his sister-in-law and her husband, commencing in June 2013. His sister-in-law and her husband loaned him money in 2006 under an informal arrangement. (Tr. 40-43) When later pressed for repayment initiatives, Applicant agreed to do so. While obligated to make \$500 monthly payments to his sister-in-law and her husband, they have actually been “paying them only \$300 a month.” (Tr. 43)

Applicant’s payment arrangement with his sister-in-law and her husband is not included in his Chapter 13 plan. Applicant has also obligated himself to make monthly payments of \$250 to his son to partially cover his son’s monthly college expenses (AE D; Tr. 43) and another \$250 a month to cover legal expenses associated with his wife’s divorce from her previous husband. (AE F; Tr. 43-44) These monthly payments have been made through a \$500 monthly allotment from his retirement account. (AE B)

Applicant has not received any formal financial counseling, other than his required Chapter 13 on-line counseling. (Tr. 53) However, he has benefitted from the medical

counseling he initiated to address his depression issues. (Tr. 51, 69-70) Applicant reported net monthly income of \$11,350 and monthly expenses of \$3,150. *Compare* GE 8 with AE B. He reported monthly debt payments of \$7,125, which encompasses both his monthly mortgage payments and his trustee payments. (GE 8) He listed a net monthly remainder of \$1,075 and assets totaling \$343,000. (GE 8)

## **Endorsements**

Applicant is well-regarded by his supervisors. (AE A) His supervisor cited him as one of his sounding boards (almost as a mentor) and credited him with the knowledge, wisdom, and experience that only comes from a long and distinguished career as a U.S. Navy officer. (AE A) Applicant's supervisor considered Applicant trustworthy and recommended him to a position of trust. Friends who served with Applicant similarly expressed confidence in Applicant's trustworthiness and ability to safeguard classified information. (AE A)

## **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance 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." They 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. The following AG ¶ 2(a) factors are pertinent: (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 chances; (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 guidelines are 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. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

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**

Security concerns are raised over Applicant’s history of delinquent debts, attributable to excessive spending and poor financial decisions. Applicant’s debt accruals raise potential security concerns about his judgment, reliability, and trustworthiness in managing his personal finances. He has since petitioned for Chapter 13 bankruptcy protection and has made making monthly payments to his Chapter 13 trustee and his mortgage lender since 2011. His amended modified plan is court-approved. Applicant’s actions 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 obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

By 2011, Applicant’s debts had risen to levels he could no longer responsibly service with his available income sources. To achieve payment terms he could realistically manage, he petitioned for Chapter 13 bankruptcy protection in February 2011. However, his lengthy history of excessive spending and poor decision-making in managing his finances is not extenuating enough to entitle him to the application of MC ¶ 20(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.”

Applicant’s only financial counseling consisted of the required on-line counseling he received in connection with his Chapter 13 petition. Without more elaboration of the nature of the on-line counseling he completed, no more than partial application of MC ¶ 20(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,” is warranted in these circumstances. By successfully petitioning for Chapter 13 bankruptcy relief and establishing well-supported monthly payments to the Chapter 13 trustee and his lender, Applicant has established a promising track record for resolving his debts. MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” fully applies to Applicant’s situation.

Applicant's documented Chapter 13 plan and payment history reflect satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). That Applicant is currently unable to address his additional delinquent debts identified in his credit reports and SOR, but not covered in his Chapter 13 plan, is not enough to deprive him of the mitigation benefits achieved from his Chapter 13 plan and implementation. So long as Applicant is able to establish a credible and realistic plan, or plans, to resolve his financial problems, accompanied by significant actions to implement his plan, he meets the Appeal's Board requirements for stabilizing his finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008). See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan., 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant presents with a distinguished Navy career and record of civilian employment with his defense contractor employer. He has impressive university schooling to his credit and the support of supervisors and friends who have worked with him. While his aggregate debt is considerable, he has developed a significant track record with his Chapter 13 trustee and mortgage lender and is committed to restoring his finances to respectable levels consistent with holding a security clearance. Applicant's overall payment initiatives to date are encouraging and are likely to succeed.

While Applicant has not addressed the eight SOR-listed consumer debts accumulated since he petitioned for Chapter 13 relief, he is committed to doing so once his income resources permit. Applicant is well-educated with demonstrated trustworthiness in his personal and business affairs, and knows what he needs to do to fulfill and maintain his financial responsibilities.<sup>1</sup>

Overall, Applicant's corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

### **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:

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Approval of a clearance does not prevent the Government from revisiting and re-validating an applicant's financial condition at any future time through credit reports, investigation, and additional interrogatories. Violation of promises made (explicitly or implicitly) to pay legitimate debts and maintain valid accounts in current status raises judgment concerns under both Guideline F and Guideline E and may support a future security clearance revocation. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012)(citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 8, 2011). And no such suggestion is made herein that Applicant's clearance is a conditional one.



GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas. 1.a through 1.k:

For Applicant

**Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge

