



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-06780

Appearances

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

12/17/2013

Decision

WESLEY, Roger C., Administrative Judge:

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

Statement of Case

On August 15, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary 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 October 9, 2012, and requested a hearing. The case was assigned to another judge on May 15, 2013, reassigned to me on August 27, 2013, and scheduled for hearing on September 25, 2013. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and 25 exhibits (AEs A-CC). The transcript (Tr.) was received on October 3, 2013.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documented payments on his inherited property and to his debt consolidation group. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with partially illegible correspondence from his debt consolidation group covering four of Applicant's listed creditors and excerpts from a February 2013 credit report reflecting nine negative accounts and two positive accounts. Applicant's submissions were admitted as AEs DD and EE.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 24 delinquent medical and consumer debts exceeding \$55,000. Allegedly, he failed to file state income tax returns for tax years 2008 through 2011, failed to file federal income tax returns for tax years 2005 and 2009, and failed to pay property taxes on inherited property.

In his answer to the SOR, Applicant admitted most of the allegations. He denied the allegations covered in subparagraphs 1.c (\$6,455), 1.o (\$570), 1.t (\$155), and 1.x (\$11,227). He claimed he returned the vehicle to the car's seller identified in subparagraph 1.c and understood there would be no amount owing from the return. He claimed he does not know anything about the creditor identified in subparagraph 1.o and satisfied the debt covered in subparagraph 1.t.

Applicant also claimed in his response that the deficiency associated with a trade-in he completed in 2006 (creditor 1.x) was based on a misunderstanding and will be satisfied out of settlement arrangements initiated by the law group he has employed. For those debts he admitted, he claimed he will complete settlement arrangements with the same law firm he employed.

Findings of Fact

Applicant is a 59-year-old desktop support technician of a defense contractor who seeks a security clearance. 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 wife in November 1972 and divorced her in April 1980. (GE 1) He has one daughter and one stepdaughter from this marriage (ages 32 and 42, respectively). Applicant married his second wife in September 1992 and has no children from this marriage. (GEs 1 and 2; Tr. 84-85) He earned an associate's degree in computer and electronic engineering in June 1997 and received work-related technical training between March 1983 and March 1984, and again between September 1989 and May 1990. (GE 1)

Applicant enlisted in the Army in March 1983 and served six months of active duty and nine years of reserve duty. (GE 2 and AE CC) He received his honorable discharge in September 1992 and served four years of Army Reserve duty between September 1991 and January 1995. (GE 2 and AE CC) While on active duty in support of Operation Desert Storm in 1991, Applicant earned numerous decorations, including a Bronze Star Medal, an Army Commendation Medal, an Army Achievement Medal, a National Defense Service Medal, and an Army Reserve Components Achievement Medal. (AE CC)

Applicant's finances

Between 2002 and 2012, Applicant accumulated a number of delinquent debts during recurrent periods of unemployment and underemployment. (GEs 1 and 2; Tr. 64-70, 81-83, 89-90) Altogether, he accrued 24 delinquent debts exceeding \$55,000. (GEs 2-5) They are listed in his credit reports and include a judgment covering unpaid rent that was entered in December 2008 in the amount of \$9,308 (creditor 1.a); a repossession deficiency in the amount of \$6,455 (creditor 1.c); a student loan of \$1,872 (creditor 1.s); and a car purchase deficiency in the amount of \$11,227 (creditor 1.x).

With insufficient funds to cover his estimated state taxes for tax years 2008 through 2011, he failed to file state tax returns for these years. Funding deficiencies also contributed to his failures to file his federal income tax returns for the tax years of 2005 and 2009. And since July 2010, he became obligated to make \$291 monthly property tax payments in connection with his assessed delinquent taxes (\$10,222) on his inherited land covered by subparagraph 1.aa. (AEs Z and AA; Tr. 73-74, 99)

Since returning to full-time employment over 17 months ago, Applicant has addressed several of his debts through payment plans, first with a legal group (A Group), and more recently (in February 2013) with a debt repayment group (B Group). (AE A; Tr. 66, 89-90) With the A group, he made no documented payment progress, but did obtain the removal of several debts from his credit report. (AE DD; Tr. 76-80) Debts removed from his credit reports include the following: creditor 1.b (\$11,021); creditor 1.c (\$6,455); creditor 1.i (\$898); creditor 1.l (\$67); creditor 1.o (\$570), creditor 1.t (\$155); and creditor 1.x (\$11,227). (GEs 3-5 and AE DD) Whether these debts were removed based on successfully mounted disputes over their legitimacy, or due to age, is unclear. (AE EE; Tr. 77) Neither of these two groups provided any formal financial counseling. (Tr. 70, 86-88)

In May 2013, Applicant completed an installment agreement with the IRS to satisfy a \$13,015 federal tax debt covering tax years 2004-2006, 2008-2010, and 2012. (GE 2 and AE Y; Tr. 72-73) Under the terms of his agreement, Applicant obligated himself to make monthly payments of \$172. (AE Y) Previously (in September 2010), he completed an installment agreement with the IRS to cover tax liabilities totaling \$6,451 for the tax years of 2004, and 2006-2007 with agreed monthly payments of \$181. (GE 2 and AEs Y and Z; Tr. 71-74) Unable to meet the monthly payments called for in his 2010 installment agreement, he submitted to periodic \$45 monthly payments through check garnishment to the IRS over a six month period spanning July 2011 and November 2011. (GE 2 and AE Y) IRS payment records document the receipt of \$588 under the 2010 installment agreement. (AE Z; Tr. 74-75) It is unclear how many additional payments Applicant made to the IRS under his 2013 installment agreement.

Addressing his remaining debts, Applicant scheduled four listed creditors for repayment in his repayment agreement with B Group: creditor 1.x (\$11,602), creditor 1.r (\$1,252), creditor 1.i (\$898), and creditor 1.o (\$570). He documented one up-front payment of \$244 to the B Group, but no follow-up payments. (AE A; Tr. 95) Further, he has since applied for and obtained a property tax loan to satisfy the back taxes owing on this property. (AE AA; Tr. 93-94) Under the loan's terms, Applicant is making loan payments of \$291 a month. (AE AA; Tr. 94) However, he has not provided any documentation of the number of loan payments he has made to date.

Applicant's furnished evidence does not reveal much headway with the balance of his creditors covered in the SOR. (GEs 2-5; Tr. 75-82) Except for some documented payments on one of his education loans (creditor 1.t), these debts have either been charged off, placed in collection, or reduced to judgment. (GEs 3-5; Tr. 78) Most of these creditors owning these debts have not been contacted by Applicant and have not been pursued by the creditors. (Tr. 77-80) Some are presumably barred by his state's statute of limitations. (GEs 3-5 and AE EE; Tr. 77-80) Creditor 1.s (holder of one of the defaulted student loans made to Applicant) has continued to monitor Applicant's loan without any apparent payment success. (GE 2)

In a 2012 personal financial statement, Applicant reported net monthly income of \$2,592 a month. (GE 2; Tr. 91) He reported monthly personal expenses of \$2,100 and over \$700 in monthly debt payments, leaving a deficit remainder of over \$300 a month (GE 2) He estimates his monthly expenses have since increased by almost \$500 a month, and he has no savings. (GE 2; Tr. 93) Applicant has a very modest repayment history with the IRS, his debt consolidation groups, and his remaining creditors, and no realistic means of meeting his payment obligations on his proven debts.

Endorsements

Managers, supervisors, and coworkers who have worked with Applicant value his technical and communications skills and his integrity and recommend him for a position of trust. (AE BB) Applicant provided no performance evaluations or proof 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."

These guidelines 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 revised 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 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. 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 and financial instability, marked by medical, consumer, and tax debts, an adverse judgment, and state and federal tax filing deficiencies. Since accruing these delinquent debts, Applicant has been able to remove several of the debts from his credit reports. Also, he has completed repayment arrangements with two firms and the IRS. Still, he has no compiled track record or demonstrated means of paying his remaining debts in a sustained manner. Moreover, he has failed to document any filings of back state and federal tax returns cited in the SOR.

Applicant's accumulation of delinquent debts; his incurring an adverse judgment and failing to file state and federal tax returns; and his past inability to address most of his identified debts and tax returns raise potential security concerns about his judgment, reliability, and trustworthiness in managing his finances. His actions warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts;" DC ¶ 19(c) "a history of not meeting financial obligations;" and DC ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

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 implicit in financial cases.

While potentially extenuating, Applicant's identified periods of unemployment and underemployment were not fully developed and are not accompanied by timely repayment initiatives after returning to gainful employment. As a result, only partial 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," has some application to Applicant's situation.

Full mitigation is also lacking in Applicant's payment initiatives to date. While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). Applicant's completed debt repayment plans are not accompanied by any sustainable payment history and do not afford him any realistic opportunity to pay or settle his listed debts with the resources he has available to him.

While Applicant has satisfactorily resolved several of the listed debts through payment initiatives and removal from his credit reports, most of his debts remain either unresolved or inadequately addressed. Still unresolved, too, are the adverse judgment entered against him, his multiple tax debts with state, federal, and local authorities and his state and federal tax filing deficiencies. Applicant's efforts do merit partial application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." But for lack of any evidence of formal counseling or clear indications of resolution of the raised financial issues, he may not take any advantage 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."

In the past, Applicant has relied on charge-offs, passage of time, and modest enforcement action by his creditors. Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Nonetheless, they provide effective collection barriers and, like bankruptcy, serve to insulate the debtor from pressures to raise cash to satisfy his or her creditors.

To be sure, many of Applicant's larger debts are aged (dating to 2006 and before) and are likely barred by statutes of limitation in his state. Still, they remain unsatisfied for the most part. So, too, Applicant has failed to provide any documentation of his filing state and federal tax returns for the years in question or mounting payment efforts on the debts not covered by his consolidated payment plans. Minimal mitigation initiatives necessary to meet Appeal Board requirements are not demonstrated in Applicant's case.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances played a role in Applicant's accumulation of delinquent debts. Less clear is how his economic circumstances prevented him from better addressing his medical, consumer, and tax debts, and his other accrued legal obligations once he returned to full-time employment. He still owes in excess of \$35,000 on his remaining debts, and has failed to document any progress in filing back state and federal tax returns for the noted years.

While Applicant has made some modest headway in addressing several of his listed consumer debts, and has successfully completed repayment agreements with debt consolidation firms, the IRS, and the local firm administering his property taxes, he still retains outstanding delinquent debts without any convincing evidence of a sustained payment history or realistic means of repaying the creditors covered by his agreements. Important, too, Applicant has not documented any formal financial counseling or shown any progress in filing back state and federal tax returns.

To his credit, Applicant has made some good-faith efforts to address his creditors and has a commendable service record. Neither his service record nor his endorsements from managers, supervisors, and co-workers are enough, though, to overcome security concerns over the state of his finances. Applicant's efforts to date are insufficient to facilitate safe predictable judgments about his finances.

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, 1.d-1.h, 1.j-1.n 1.p-1.s, 1.u-1.w,
and 1.y-1.aa:

Against Applicant

Subparas. 1.b, 1.c, 1.i, 1.o, 1.t, and 1.x:

For 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

