



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-07735

Appearances

For Government: Gregg Cervi, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2013

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 and personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On August 3, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOD recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. This 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 Department of Defense on September 1, 2006.

Applicant responded to the SOR on August 28, 2012, and requested a hearing. The case was assigned to me on November 26, 2012, and was scheduled for hearing on December 6, 2012. The hearing was convened on that date. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and nine exhibits (AEs A-I). The transcript (Tr.) was received on December 14, 2012.

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 to creditors 1.a, 1.b and creditors 1.j through 1.o. There being no objection from Department Counsel, and good cause being demonstrated, Applicant was granted seven days to supplement the record. The Government was afforded one day to respond. Within the time permitted, Applicant supplemented the record with documented payments to creditors 1.a/1.b (the same creditor), 1.e, and 1.i/1.m (the same creditor). Applicant's submissions were admitted as AEs J through L.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated 15 delinquent debts totaling more than \$27,000 since 1996 and (b) petitioned for Chapter 7 bankruptcy relief in May 1996 (discharged in August 1996).

Under Guideline E, Applicant allegedly falsified his security clearance application (e-QIP) of November 2010 by omitting (a) his failure to pay his taxes for tax years 2008 and 2009; (b) garnishment of his wages from 2004 through 2010 for failure to pay his taxes, and in September 2010 for failure to pay his student loans; and (c) his delinquent debts.

In his response to the SOR, Applicant admitted most of the allegations pertaining to the listed delinquent debts. He denied the debts covered by subparagraphs 1.c, 1.j, 1.k, and 1.n. He claimed he could not find either 1.c or 1.j in his credit report and disputes both debts. He claimed he is in negotiations with creditors 1.f through 1.h to resolve the debts. He claimed he has reached settlements with creditors 1.a/1.b, 1.d, 1.e, 1.i/1.m, 1.l, and 1.o.

Responding to the allegations covered by subparagraphs 2.a through 2.c, Applicant denied falsifying his e-QIP. He claimed he misread the questions and answered them in haste, and with no intention of deceiving the Government.

Findings of Fact

Applicant is a 59-year-old system engineer for a defense contractor who seeks a security clearance. The SOR allegations admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in August 1973 and divorced his spouse in December 1999. (GE 1) He has three adult children from this marriage. (GE 2) He earned a bachelor's degree in electrical engineering from an accredited university in May 1993 and a master's degree in industrial engineering from the same university in December 1996. (GE 2). He claims no military service.

Finances

Before joining his current employer in August 1999, Applicant owned and operated plumbing businesses. (GE 2; Tr. 53-54) Struggles with profitability and debt collections issues with his customers prompted him to close his business and pursue bankruptcy relief. (GE 2; Tr. 53-54) Records reflect that Applicant accrued back taxes associated with his plumbing businesses and credit card debts resulting from his daughter's misuse of his furnished credit cards. (Tr. 65-66)

In May 1996, Applicant petitioned for Chapter 7 bankruptcy relief. In his petition he scheduled \$188,000 of unsecured debts and received his discharge in August 1996. (GE 2; Tr. 53-55) Documentation of Applicant's schedules of assets and claims filed with his Chapter 7 petition is not available.

Between 2009 and 2010, Applicant accumulated a number of delinquent debts. Comprising these debts are creditors 1.a/1.b (\$338 and \$531, respectively, covering the same debt); creditor 1.d (\$1,181); creditor 1.e (\$1,458); creditor 1.f (\$4,341); creditor 1.g (\$6,109); creditor 1.h (\$4,635); creditor 1.i/1.m (\$1,925 covering the same debt); creditor 1.j (\$793); creditor 1.k (\$1,094); creditor 1.l (\$427); creditor 1.n (\$755); and creditor 1.o (\$2,973). Both his creditor 1.a/1.b debts and his creditor 1.i/1.m debts are manifest duplications and are treated as such. Applicant attributes these debts to a host of factors: abusive use of his credit cards by his daughter without his knowledge, 401(k) advances to cover his old tax debts with the IRS, and debt allocations stemming from his divorce decree.

Since receiving the SOR, Applicant has settled several of his listed debts. He documented his completed settlement obligation with creditors 1.a/1.b with a \$190 payment in August 2012. (AEs A, B, and J; Tr. 33-35) He provided written proof of his \$750 payment to creditor 1.d in September 2012 in satisfaction of his debt to this creditor. (AEs C and I; Tr. 37) Applicant provided documentary proof also of his full payment of his creditor 1.e debt with a \$539 payment in September 2012. (AE F and K) He confirmed, too, his \$1,221 payment in two installments to creditors 1.i/1.m in September 2012. (AEs B, G, I, and L; Tr. 42-43, 46-49) He provided documentation of his payment to creditor 1.l in September 2012 in the agreed settlement sum of \$314. (AEs F, I, and K; Tr. 44) And he documented his payoff agreement with creditor 1.o in the agreed amount of \$1,189 (sans any payment proofs) in September 2012. (AE H; Tr. 51-52) His documented payments to date approximate \$3,000.

Afforded an opportunity to furnish documentation of his agreed \$1,189 payment to creditor 1.o, Applicant did not provide any payment evidence. His remaining debts are still unresolved.

Some of Applicant's listed student loan delinquencies with creditors 1.f through 1.h were partially credited through a sustained withholding order, commencing in September 2010. (GE 2 and AEs D and E) When he was notified of his loan deficiencies by the education loan entity responsible for servicing his loans, he was told he owed approximately \$16,000 on his three outstanding education loans with this service. (GEs 3-5 and AEs D and E) His paychecks were garnished bi-weekly between September 2010 and April 2011 to satisfy his accumulated delinquencies. (Tr. 40-41) Applicant claims he currently owes around \$11,000 on his student loans, a considerable reduction from his reported balances. (Tr. 41) Because his credit reports do not reflect his paycheck deductions, it is not clear how much his education balances were reduced. (GEs 4 and 5) Applicant's efforts to resolve his education loan deficiencies through negotiations with his lender have not been successful to date.

The only other listed debts not addressed are Applicant's creditor 1.c debt, his creditor 1.j and creditor 1.k debts, and his creditor 1.n debt. He disputes the creditor 1.c debt, which has since been removed from his credit reports, and he has been unable to identify the creditor 1.j and 1.k debts as ones belonging to him. (GEs 2-5; Tr. 35-36, 43-44) He recognizes the creditor 1.n debt (a charged-off auto account), which he intends to address soon. (GEs 4 and 5; Tr. 35-36) Altogether, Applicant still owes in excess of \$13,000 in unpaid delinquent debts covered by the SOR.

Applicant has received no financial counseling to date. (Tr. 68) He currently nets around \$3,636 a month and accrues monthly expenses of approximately \$2,198. (GE 3) He has no money left from his old 401(k) account to address his debts. (Tr. 73) He has satisfied all of his old federal and state tax debts and has acquired no new credit cards. (Tr. 74) Applicant is able to meet his current financial obligations and live within his means. He has incurred no new debts and is current with his mortgage. (Tr. 55-56) He estimates his home to be worth approximately \$110,000, and he has two vehicles worth around \$17,000. (GE 2; Tr. 71-73) Applicant is looking for work and estimates good job prospects with the employer who continues to sponsor his security clearance application. (Tr. 48-50, 57-61) He hopes to be able to address his delinquent debts soon. (Tr. 61-62)

Applicant's E-QIP omissions

Asked to complete an e-QIP in November 2010, Applicant answered "no" to the question in Section 26 that inquired about his financial obligations, including whether he failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance. Applicant answered "no," and in doing so failed to disclose his failures to pay taxes for tax years 2008 through 2009. (GEs 1 and 2; Tr. 66-68) Two months earlier (in September 2010), he paid all of his back taxes owed to the IRS with \$11,000 in funds borrowed from his 401(k) account. (Tr. 57-60, 74-75)

Both in his OPM interview and in his hearing testimony he attributed his omissions to oversight and haste. (GE 2; Tr. 79-80) By answering “no”, he omitted his delinquent 2008 and 2009 tax obligations, which he knew were delinquent. (GE 2; Tr. 67-68) Applicant cannot avert inferences that his omissions were made knowingly and willfully.

In the same 2010 e-QIP, Applicant answered “no” to the question in Section 26 that asked whether he had ever had his wages, benefits, or assets garnished for any reason. In answering in the negative he omitted his wage garnishments from 2004 through 2010 for failure to pay his taxes, and also in September 2010 for failure to pay his student loans. (GEs 1 and 2; Tr. 68-69) Applicant was fully aware of the most recent garnishment actions taken by the IRS and the federal agency charged with administering the federal Government’s student loan program. (Tr. 67-68, 76-80) Considering all of the circumstances, inferences warrant that his omissions were made knowingly and willfully.

Finally, when completing his November 2010 e-QIP, Applicant answered “no” to the question in Section 26 that inquired about whether he is currently over 90 days delinquent on any debt, and whether he had been over 180 days delinquent on any debt within the previous seven years. (GEs 1 and 2) Applicant omitted all of his delinquent debts when answering the question, and omitted the information knowingly and willfully. (GEs 1 and 2; Tr. 66)

Applicant was interviewed by an agent from the Office of Personnel Management (OPM) in December 2010 in connection with his clearance application. When interviewed, he volunteered information pertaining to a past federal tax lien filed in 1991 to cover \$18,000 in unpaid taxes. (GE 2) He furnished voluntary disclosures, too, of wage garnishments from 2004 to 2010 to enforce the IRS tax lien and in September 2010 to enforce payment of unpaid student loan obligations exceeding \$16,000. (GE 2; Tr. 56-57)

In this initial OPM interview, Applicant also volunteered old bills and debts turned over to collection agencies and acknowledged defaults in credit card debts associated with his daughter’s use of his credit cards in the 2005-2007 time frame. (GE 2) In a second interview conducted by the same OPM agent in March 2011, Applicant was confronted with the details of the individual delinquent accounts, which he acknowledged to the investigator in a manner that squared with his earlier voluntary answers. (GE 2)

In this second OPM interview, the agent also confronted Applicant with reports of additional tax liens filed against him besides the 1991 lien he voluntarily disclosed. (GE 2) When confronted, Applicant acknowledged multiple liens filed against him covering back taxes he owed dating to 1986. (GE 2) He acknowledged owing taxes for the tax years 1994-1996, as well as for tax years 2008 and 2009. These tax delinquencies resulted in liens being placed against him. (GE 2; Tr. 67) Together, all of his owed taxes totaled around \$18,000, which he satisfied with lump-sum payment in September 2010.

(GE 2; Tr. 67) He has taken no action, however, to have any of liens updated to reflect his satisfaction of the amounts owed to the IRS.

Endorsements

Applicant did not provide character references from any identified sources. Nor did he provide any performance evaluations or evidence of his contributions to his employer, family, and community.

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." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, 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. AG ¶ 2(a) is 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 adjudication policy factors are pertinent herein:

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."

Adjudicative Guidelines, ¶ 18.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG, ¶ 15.

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). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Analysis

Applicant is a systems engineer with a considerable history of financial instability. Based on the presented proofs, Applicant incurred multiple tax liens over a 20-year period associated with poor business conditions. Additionally, he accumulated numerous delinquent debts that resulted in a bankruptcy in 1996, and additional delinquent debts since his bankruptcy discharge. Applicant’s recurrent history of financial problems raises security concerns.

Other security concerns arise from Applicant’s omissions of his tax liens, his wage garnishments, and his delinquent debts. His omissions were material to information needed by the Government to complete its relevant background checks.

Financial concerns

Most of Applicant’s listed debts have been paid or resolved. Others remain. Several debts are disputed (creditors 1.c, 1.j, and 1.k); while previously garnished student loans (creditors 1.f through 1.h) and two consumer debts (creditor 1.n and 1.o) remain unaddressed. Outstanding balances on Applicant’s disputed and unpaid debts approximate \$3,000.

Applicant’s past history of accumulations of delinquent debts and his past inability to resolve his most recent debts, either by payment, successful dispute, or a combination thereof, warrant the application of two of the disqualifying conditions (DC) of the AGs for financial considerations: ¶ DC 19(a), “inability or unwillingness to satisfy debts,” and ¶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 implicit in financial cases.

Extenuating circumstances associated with Applicant's debts are dated and entail business losses antedating his 1996 bankruptcy and his daughter's ensuing misuse of his credit cards. 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 under the circumstances," have some application to Applicant's situation, but not a great deal based on the tangible evidence presented.

To date, Applicant has made some payment progress with his listed debts. But he still owes in excess of \$13,000 in delinquent debts after crediting him with duplications and payments, and has made no documented material progress in addressing his remaining debts. Since his 2010 OPM interview, he has neither pursued financial counseling nor explored debt repayment programs with his student loan and consumer creditors. At this time, he still has no organized budget or plan in effect to resolve his remaining debts.

Financial counseling and follow-up payment initiatives with his creditors could reasonably be expected of Applicant following his 2010 OPM interview to satisfy the good-faith and due diligence repayment requirements of MC ¶ 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," and MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Based on the circumstances of this case, Applicant can take very little advantage of either MC ¶ 20(c) or MC ¶ 20(d).

While an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously, he needs a credible plan to resolve his financial problems, accompanied by implementing actions. See ISCR Case No. 07-06488 (App. Bd. May 21, 2008). Applicant's actions to date, reflect payoffs of some of his creditors, but no concretized plans to resolve his debts associated with his major student loans and his two remaining consumer debts.

Consideration of Applicant's background and financial history, his bankruptcy discharge, his recurrent problems with imposed tax liens associated with his delinquent taxes and student loans, and his latest struggles with delinquent consumer debts make it very difficult to credit Applicant with the degree of good judgment, reliability, and trustworthiness necessary to mitigate security concerns about his finances at this time. Applicant's corrective efforts taken to date, while encouraging, are insufficient to enable him to meet his evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is insufficient to demonstrate that Applicant has mounted sufficient good-faith efforts over the 15 years since his bankruptcy discharge to satisfy his outstanding debts. Since he did not provide any endorsements or documentation of his work-related evaluations and civic contributions, whole-person assessment lacks sufficient information to provide any material countervailing considerations to take into account in making an overall trust assessment

of Applicant's clearance eligibility. In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole person. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.f through 1.h, and 1.n through 1.p of the SOR. Favorable conclusions warrant with respect to subparagraphs 1.a through 1.e, and 1.j through 1.m.

Personal conduct concerns

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E as the result of his omissions of his tax liens, wage garnishments, and debts over 180 days and 90 days delinquent, respectively, in the e-QIP he completed in November 2010. By omitting these liens, garnishment actions, and delinquent debts, Applicant failed to furnish potentially material background information about his finances that was needed for the Government to properly process and evaluate his security clearance application. Both DC ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts to any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," and DC ¶ 16(d)(3), "a pattern of dishonesty or rule violations," apply to Applicant's situation.

When first asked about tax liens, wage garnishment actions, and delinquent debts by the OPM investigator tasked to investigate Applicant's finances in a December 2012 interview, Applicant voluntarily disclosed some of his tax liens, his wage garnishments, and delinquent debts turned over to collection agencies. However he did not disclose the multiple tax liens filed against him until firmly confronted by the interviewing OPM agent in a second interview conducted in March 2011.

Applicant's disclosures that resulted from his being confronted do not meet the prompt, good-faith requirements of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." His answers to questions posed by the OPM agent who interviewed him a second time in March 2011 cannot be fully reconciled with the prompt, good-faith requirements of MC ¶ 17(a). And none of the other mitigating conditions covered by Guideline E apply to Applicant's situation. Accordingly, Applicant's corrections of his e-QIP omissions of material financial information are not fully mitigated.

In evaluating all of the circumstances surrounding Applicant's withholding of material information about his finances in the e-QIP he completed, the answers he provided in his ensuing OPM interviews, his explanations, and whole-person considerations, his e-QIP omissions and the timing of his corrections are insufficient to enable him to convincingly refute or mitigate the deliberate falsification allegations. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, are each core policy concerns of the personal conduct guideline (AG ¶ 15).

Overall, Applicant's explanations are not persuasive enough to warrant conclusions that the falsification allegations relative to his completed 2010 e-QIP covering his tax liens are either refuted or mitigated. Applicant's omissions of his wage garnishments from 2004 through 2010 and his having debts over 180 and 90 days delinquent were promptly corrected in good-faith during Applicant's initial OPM interview and are mitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.f through 1.h, and 1.n through 1.p:	Against Applicant
Subparagraphs 1.a through 1.e. and 1.j through 1.m:	For Applicant
GUIDELINE E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b and 2.c:	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

