



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00523

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

01/03/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

History of the Case

On June 12, 2013, 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 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 July 1, 2013 and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on September 25, 2013, and responded to the FORM within the time permitted. The case was assigned to me on November 12, 2013.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 13 bankruptcy relief in February 2012 (dismissed in January 2013 for failure to make all scheduled payments to the trustee as required); (b) accrued a \$69,296 deficiency on a foreclosed mortgage property sold on transferred in June 2012; and (c) accumulated six delinquent debts exceeding \$14,000.

In his response to the SOR (Item 3), Applicant admitted all of the allegations covered by Guideline F with explanations. He claimed he voluntarily dismissed his Chapter 13 petition with the intention of petitioning for Chapter 7 relief following the required 180-day waiting period. He claimed he made all scheduled payments to his Chapter 13 trustee through approved payroll deductions. He claimed unawareness of any deficiency owing on his foreclosed property, for which he received a 1099-A form from the creditor in 2011. Applicant attributed his financial problems to unforeseen income losses associated with his wife's injuries, extraordinary repairs associated with discovered mold in his basement, and mechanical problems with his vehicles.

Applicant responded timely to the issuance of the FORM in October 2013. (Item 12) In his response, he submitted additional documentation. His submissions were comprised of the following: a February 2010 medical certification concerning his wife (Item 13); a certificate of financial counseling (Item 14); an August 2012 medical statement concerning his wife (Item 15); a prepared personal financial statement (Item 16); and summaries of his bankruptcy schedules. (Item 17)

Findings of Fact

Applicant is a 44-year-old machinist for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as a relevant and material finding. Additional findings follow.

Background

Applicant married in June 1991 and has two children from this marriage, ages 23 and 17. (Item 6) He claims no college credits within the past seven years and no military service.

Applicant's finances

Records document that Applicant pursued Chapter 7 bankruptcy in 1996 after experiencing an episode of shingles that impeded his facial function and ability to close his left eye. (Items 7 and 12) This condition (Bells Palsy) made it difficult to work and caused a good deal of time off and ensuing financial difficulties. He has no documentation to assess his debt and earnings schedules filed with this Chapter 7 petition. (Items 7 and 12) Applicant reported a Chapter 7 discharge in December 1996. (Item 12)

In 2002, Applicant reported that his wife underwent a tonsillectomy due to cancer concerns that required several months of recuperation and extensive time off from work without pay. (Item 12) Burdened with credit card debt and the costs of maintaining two vehicles and a manufactured home, he petitioned for Chapter 7 bankruptcy relief once again in December 2002. (Item 12) Schedules of income and creditor claims are not available. Applicant reported his receiving a Chapter 7 discharge in April 2003. (Items 7 and 12) He included in his 2002 Chapter 7 petition the balance owed on a repossessed truck he purchased in April 2001 for \$36,000. (Item 7)

In his November 2012 interview with an agent from the Office of Personnel Management (OPM), Applicant attributed his need for Chapter 7 relief in 2002 to his wife who accrued excessive credit card charges. (Item 7) His explanation is at odds with his post-FORM response, where he stressed medical issues with his wife as the primary reason for his turning to Chapter 7 bankruptcy relief. (Item 12) Inferences warrant that both factors contributed to his stressed finances.

Between 2003 and 2009, Applicant and his wife accumulated a number of credit card accounts. (Items 7 and 9-11) These accounts included credit card arrangements with creditors 1.a through 1.d and a 2006 Chevrolet Silverado that he and his wife purchased in January 2006 for \$30,712. (Items 7, 9, 10, and 11) Applicant and his wife paid on this account for several years and were able to reduce the unpaid balance to \$5,646 by April 2009. (Items 9 and 10)

In January 2007, Applicant and his wife purchased a residence for \$257,000 and financed their purchase with a first mortgage with creditor 1.e. (Items 7 and 9-12) Under the terms of their mortgage, they assumed monthly mortgage payments of \$1,600. (Item 12) When his wife broke her leg in 2009 from a fall, he and his wife struggled to make their mortgage payments and eventually lost their home to foreclosure in 2012.

Credit records report that Applicant and his wife purchased another vehicle in April 2008 for \$37,085. (Items 9-11) After making considerable payments on this vehicle, they reduced the balance owing on this account to \$14,386. Applicant included the creditor holding the unpaid \$14,386 balance on this account in his latest 2013 Chapter 7 bankruptcy petition. (Item 17)

In February 2010, Applicant and his wife petitioned for Chapter 13 relief. (Items 2 and 7) They scheduled all of their secured, priority, and non-priority unsecured debts in their payment plan approved by the bankruptcy court presiding over their Chapter 13 petition in September 2010. (Items 7 and 12) After making the first four scheduled \$688 payments to the Chapter 13 trustee, Applicant failed to make the fifth payment. When Applicant failed to make this fifth payment, the Chapter 13 trustee moved in July 2010 for a dismissal of Applicant's petition. Thereafter, Applicant resumed his monthly payments to the trustee and averted dismissal of his Chapter 13 petition for over a year. (Item 4) Based on Applicant's request for a voluntary dismissal, the bankruptcy court dismissed Applicant's Chapter 13 petition in January 2013. (Item 4)

In a separate order entered by the bankruptcy court in 2012, the court lifted the automatic stay in place and permitted creditor 1.h to proceed with its mortgage foreclosure covering Applicant's residence. (Item 7) In February 2012, the court issued a final order ratifying and confirming the trustee's sale of the underlying property. (Item 5) Records document that foreclosing creditor 1.h completed its sale of Applicant's property in June 2012. (Item 5) Following sale of the property, a deficiency of \$69,296 remained. This deficiency has not been satisfied and is included in Applicant's 2013 Chapter 7 bankruptcy petition. (Items 9-11 and 17)

Following the dismissal of their Chapter 13 bankruptcy petition, Applicant and his wife incurred additional debt with their March 2013 purchase of a Toyota Camry for around \$15,000. (Items 11 and 12) Upon the advice of Applicant's lawyer, Applicant completed his required financial counseling in March 2013. Financial counseling was a condition to his obtaining Chapter 7 bankruptcy protection.

In Applicant's August 2013 Chapter 7 petition, he scheduled assets of \$48,977, secured claims of \$17,000, unsecured priority IRS tax claims of \$5,150, and unsecured non-priority claims of \$149,228. (Item 17) Applicant's scheduled non-priority claims included all of his listed debts (including a \$107,756 deficiency claim with creditor 1.h and a \$5,646 claim with creditor 1.e) He also scheduled the unsecured claim of the creditor holding the unpaid \$14,386 balance on his 2008 car purchase. (Item 17) Applicant's Chapter 7 petition remains pending with no estimates as to if and when a discharge will be approved.

Applicant provided no recent earnings statement for himself or his wife. He reaffirmed the small \$120 monthly remainder he reported in the personal financial statement he furnished in May 2013. (Items 7 and 12) In his May 2013 personal financial statement, he reported monthly income of \$3,783 for himself and \$2,608 for his wife. (Item 7) In turn, he reported monthly expenses of \$5,737, monthly debt payments of \$539, and a net remainder of \$120. (Item 7) Financially, Applicant's monthly income and expenses have not changed appreciably, but can be expected to show improvement once he receives his Chapter 7 bankruptcy discharge.

Endorsements

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any 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.

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 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.

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 listed delinquent debts (inclusive of federal tax and deficiency debts arising from foreclosures and repossessions), his multiple use of bankruptcy procedures to discharge his debts, and his limited display of payment initiatives over a 17-year period dating to 1996. Applicant's recurrent problems with managing his finances reflect considerable living beyond his means in the face of his wife's recurrent health issues.

Between 1996 and 2013, Applicant encountered recurrent problems with managing his finances. Most of his debt difficulties were associated with medical issues involving his wife. Still, he consistently overspent on major purchases (e.g., houses and vehicles) and left himself no rainy-day fund to see him through tight financial circumstances. Following his 1996 bankruptcy discharge, Applicant returned to his pre-bankruptcy spending levels and accumulated additional credit card debt, housing, and automobile debts.

When faced with medical and other economic challenges, he could not meet the payment demands of his creditors, and turned again to Chapter 7 bankruptcy protection, first in 2002 and more recently in 2013. Applicant's accumulation of credit card, mortgage, and auto loan debt delinquencies 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(e), “consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

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.

While potentially extenuating, Applicant's recurrent income losses associated with his wife's recurrent medical emergencies are not sufficiently developed to establish any sustained income reductions sufficient to extenuate all of his recurrent debt accumulations over a 17-year period. As a result, neither MC ¶ 20(a), "the behavior happened a long time ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," nor 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," have any more than partial application to Applicant's situation.

Applicant's finances have been marked by recurrent periods of instability for many years and show no signs of stabilizing in the foreseeable future. While there been medical emergencies and issues in the home and vehicles to address periodically, none of these issues have been sufficiently developed to show they were the principal reasons for Applicant's financial troubles.

Full mitigation is difficult to establish with Applicant's history of turning to the Federal bankruptcy laws to resolve his debts. On no less than three occasions over the past 17 years he has looked to Chapter 7 bankruptcy and foreclosure relief to absolve himself of debts he and his wife created while gainfully employed. His financial history reveals little attention to resuming sustained payment initiatives after successful bankruptcy discharges. 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 recurrent use of the bankruptcy laws to address his debts, while certainly legal, do not reflect prudent decision-making in the management of his finances over extended periods of time.

While Applicant appears likely to prevail in obtaining a discharge of his listed delinquent debts in the Chapter 7 bankruptcy he initiated in 2013, it is by no means certain. Still unresolved, too, are the back federal taxes he reported in his schedule of priority non-secured creditors in his pending bankruptcy petition. Applicant's attempts to resolve his debts through an approved Chapter 13 plan, while ultimately unsuccessful, do merit partial application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." He may benefit, too, from the on-line counseling he completed in advance of his petitioning for Chapter 7 relief and take 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.” But for lack of any strong track record of payment initiatives, these mitigating conditions warrant only partial application to his situation. Applicant’s recurrent use of the federal bankruptcy laws to discharge his debts do not meet minimum mitigation criteria and are not enough to mitigate security concerns over his finances.

From a whole-person standpoint, the evidence reveals recurrent medical issues associated with Applicant’s wife over the past 17 years, but not enough to account for the excessive debts they accumulated over the same time frame. Between 1996 and 2013, they used the Federal bankruptcy laws aggressively to extinguish their debts on no less than four occasions (inclusive of his 2010 Chapter 13 petition). Applicant’s credit reports and statements do not reveal any good-faith attempts to work out individual or consolidated payment plans with his creditors before resorting to bankruptcy protections to discharge his debts.

Without any evidence of work performance or community and civic contributions to weigh and consider, there is little evidence in the record by which to make a whole-person assessment of Applicant’s accomplishments in his business and personal life. Overall, Applicant’s efforts to date are insufficient to meet mitigation requirements imposed by the AGs governing 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 through 1.h: 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

