



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. 14-02896

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro se*

02/20/2015

**Decision**

WESLEY, Roger C., Administrative Judge:

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

**Statement of Case**

On August 26, 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 September 24, 2014, and requested a hearing. The case was assigned to me on December 15, 2014, and was scheduled for hearing on January 7, 2015. At hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on one witness (himself) and two exhibits (AEs A-B). The transcript (Tr.) was received on January 16, 2015.

### **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 documented payment of the debt covered by subparagraph 1.b, endorsements, and sale of the property covered by the allegations in subparagraph 1.d. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded seven days to respond.

Within the time permitted, Applicant supplemented the record with a one-page email confirming he had reached a payment agreement with creditor 1.b and payment of the debt owed to creditor 1.b. Applicant's post-hearing submissions were admitted as AEs C-D.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated one adverse judgment for \$297 and three delinquent debts. The debts exceeded \$47,000.

In his response to the SOR, Applicant admitted two of the debts (creditors 1.c and 1.d) and denied the remaining ones. He claimed he paid the debts covered by subparagraphs 1.a and 1.b. and disputed the amount of the debts covered by subparagraph 1.c. And he claimed the debt covered by subparagraph 1.d represented a deficiency following the creditor's repossession of the underlying property.

### **Findings of Fact**

Applicant is a 50-year-old production supervisor 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 August 1985 and divorced her in December 1992. (GE 1) He has one adult daughter from this marriage. (GE 1; Tr. 21) He remarried in December 1993 and has two adult stepchildren from this marriage. (GE 1 and 3: Tr. 22) He claimed no post-high school education credits and retained his old job on a part-time basis after he joined his current employer in 2008. (GE 1; Tr. 24-25)

Applicant enlisted in the Marine Corps in March 1983. (GE 1) He received an honorable discharge in February 1987 after serving four years of active duty. (Tr. 20) Applicant reenlisted in the Marine Corps in March 1987 and served 18 months before receiving a general discharge in August 1988 for cited financial irresponsibility (i.e., debt collectors calling his command). (GE 1; Tr. 21)

### **Applicant's finances**

Applicant accumulated four delinquent debts between 2007 and 2009. (GEs 2-3) In May 2007, Applicant received medical treatment without medical insurance to cover the costs of treatment. (GEs 2-3) When he failed to pay the medical bill, the provider's collection agent (creditor 1.a) filed suit and obtained a judgment for \$297 in March 2013. (GEs 1-2) He has since satisfied this judgment. (AE A; Tr. 30-31) Applicant accumulated another medical debt (creditor 1.b) in October 2008 in the amount of \$37. (GEs 1-2) He has since repaid this debt as well. (AEs A and D; Tr. 32-33)

In February 2008, Applicant purchased a washer and drier from creditor 1.c for about \$1,000. (GEs 2-3; Tr. 35-36) After purchasing the appliances, he made regular monthly payments for a number of months. During a brief period of unemployment in 2008 (Tr. 30-31), Applicant ceased making his monthly payments and subsequently forgot the debt altogether. (GE 3; Tr. 25) Initially, he disputed this debt, claiming it was barred by the state's statute of limitations. (GE 3) Since his hearing, he has explored settlement arrangements with this creditor and claims to have reached a payment agreement with the creditor that would permit him to make monthly payments. (AE D) To date, though, he has not documented any agreed payment arrangements with the creditor or provided any good-faith payments to the creditor. (Tr. 35-37)

In January 1998, Applicant purchased a mobile home for \$80,000 and financed his purchase with a mortgage with creditor 1.d. (GE 3; Tr. 39) Following his relocation to another state in August 2008 to assist his mother-in-law, he ceased making payments. (GEs 2-3) In early 2009, he made arrangements with the lender to complete a voluntary repossession of the home. Following the public sale of the home for \$20,000, the creditor claimed a deficiency of \$47,053. (GEs 2-3; Tr. 39-40) When Applicant could not pay the deficiency balance with his limited income, the lender assigned the debt to a collection agency. The debt has remained outstanding since early 2009.

Applicant has disputed the creditor 1.d debt on both fairness and statute of limitations grounds and noted the deletion of the debt on his updated credit report. (GEs 1-3 and AE B; Tr. 40-41) Applicant believes that the repossessing creditor has since sold the property for twice what Applicant owed on the debt and incurred no net loss on its original loan and debt financing. (Tr. 47-48) Afforded an opportunity to supplement the record with clarifying information about the creditor's handling of the public sale, Applicant did not provide any additional information about the sale. Nor did he provide any explanations as why he made no prior attempts to negotiate a fair settlement of the reported deficiency. Because typical supply and demand conditions are lacking in a public

sale of a repossessed property, closing bids could not reasonably be expected to produce sales revenue that match what could be expected in a market-based sale.

Applicant grosses about \$76,000 a year from his employment and nets about \$3,400 a month after taxes. (Tr. 42-43) His wife supplements his income with her part-time employment and nets about \$1,000 a month net of taxes. (Tr. 42-43) Also, his stepdaughter and her boyfriend who reside with him contribute \$550 a month. (Tr. 29) After allowances for monthly expenses, Applicant has a net monthly remainder of about \$500 a month. (Tr. 43-44) He is current with all of his remaining debts. (AE B; Tr. 43-45, 52-53) He expects to receive a promotion that will increase his annual gross earnings by more than \$8,000. (Tr. 53)

Applicant and his wife purchased a home in July 2014 with a \$3,500 down payment he received from an automobile settlement he completed in February 2013. (Tr. 46) And he owns three used vehicles. (Tr. 28) Since pulling his credit report in 2013 to complete his security clearance application, Applicant has paid off other debts not listed in the SOR, mostly medical bills. (Tr. 34)

### **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 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. 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. His listed debts entail an entered adverse judgment, two delinquent debts: one medical-related and consumer-related. Applicant’s actions invite the application of the financial considerations guideline.

#### **Financial concerns**

Applicant’s accrued debts are attributable to lapses in judgment in the management of his financial affairs. His debt delinquencies 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.

Applicant’s lapses in judgment in administering his finances were not accompanied by any manifest extenuating circumstances. His only break in employment occurred in 2008 and was relatively brief. This brief period of unemployment is insufficient to afford him any more than partial benefit 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.”

To date, Applicant has made little visible progress in addressing his debt delinquencies. Only two of his listed debts have been satisfied: his creditor 1.a judgment and his creditor 1.b medical debt. His efforts to complete a repayment plan with creditor 1.c, while encouraging, are not complete. And he continues to decline to address his creditor 1.d mortgage debt on grounds of perceived creditor misconduct and statute of limitations application. Under these circumstances, Applicant’s modest repayment efforts to date entitle him to no more than partial application of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

To be sure, Applicant seriously disputes his creditor 1.d debt on both fairness and statute of limitations grounds. Regardless of whether this debt is an otherwise valid debt, it may no longer be enforceable under the State's applicable statute of limitations for written contracts. Account activity covering Applicant's creditor 1.d debt was last reported by credit reporting agencies in 2008.

The state statute of limitations in Applicant's state for claims based on a mortgage-backed promissory note is five years. See § 1-52.1 of NC Rev. Stats. Applicant's listed mortgage deficiency creditor 1.d appears to be covered by the State's statute of limitations, and is treated, as such, as a debt that is limitations barred.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to mitigate security risks associated with unresolved delinquent debts, statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation. Still, they 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)).

Weight, if any, to be assigned to potentially applicable statutes of limitations under the financial consideration guideline should be considered in light of all the circumstances surrounding the applicant's historical track record and must take account of his entire history of demonstrated trust and responsibility. In Applicant's case, his financial history cannot completely discount the financial difficulties he experienced during his military service attributable to his 1988 general discharge. Although the financial circumstances that contributed to his general discharge are quite old, they do reflect a part of Applicant's financial track record and are entitled to some weight to be taken into account in assessing the amount of mitigation weight to be accorded the application of the state's statute of limitations to Applicant's circumstances. Viewed in this whole-track record perspective, the controlling state statute of limitations for secured loan transactions cannot be accorded significant mitigation weight in evaluating Applicant's overall financial risk with respect to the specifically covered creditor 1.d debt.

Based on Applicant's afforded reliance on his State's four-year statute of limitation to avert enforcement risk with respect to his limitation-barred creditor 1.d debt, full mitigation credit is not available to Applicant. By virtue of the age and non-enforcement status of the debts, MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," has only limited applicability to the limitation-barred creditor 1.d debt.

Applicant's limited repayment efforts, and failure to attempt any negotiated reduction of creditor 1.d's deficiency claim in light of Applicant's assessment of the market conditions surrounding the sale, do not 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). Applicant's modest repayment actions are not enough to enable him to meet 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 documents some repayment progress, but not enough to facilitate safe predictions about his ability to manage his finances in the future. He has not completed repayment plans with his remaining two creditors (i.e., creditors 1.c and 1.d), and has failed to demonstrate any payment track record that meets minimum Appeal Board criteria. He provided no evidence of civic or community contributions and only limited evidence of repayment with his payoffs of his two small creditors (i.e., creditors 1.a and 1.b) Overall, Applicant's corrective actions to date are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable 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:

**GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparas. 1.a-1.b:  
Subparas. 1.c-1.d:

For Applicant  
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.

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Roger C. Wesley  
Administrative Judge





