



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-01239
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

11/03/2014

Remand Decision

WESLEY, Roger C., Administrative Judge:

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

History of the Case

On May 20, 2014, 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 June 16, 2014, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of

Relevant Material (FORM) on July 29, 2014, and based on the initial record reviewed did not respond to the FORM. The case was assigned to me on September 4, 2014.

On October 23, 2014, the Appeal Board remanded the case for reconsideration in light of Applicant's post-FORM materials that through administrative oversight were not presented for consideration. Applicant's post-FORM materials are admitted as Items 8-14.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 11 delinquent debts. Together, they exceed \$15,000.

In his response to the SOR (Item 2), Applicant admitted the allegations covered by the SOR with explanations. He claimed he has encountered difficulty keeping up with his monthly expenses since his father-in-law passed away in April 2008. He claimed his children and his spouse are his first priority, and, as a result, he has been able to address only about half of his debts to date. He claimed he plans to willingly satisfy the rest of his debts in a timely way. (Item 2)

Findings of Fact

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

Background

Applicant married in August 1988, and has three children from this marriage. (Item 4) Applicant earned a high school diploma but no college degree or diploma. (Item 4) He claimed no military service and provided no endorsements, performance evaluations, or corroborative evidence of community and civic contributions.

Applicant's finances

Between 2002 and 2009, Applicant accumulated many delinquent debts while prioritizing his financial commitments to his wife and children. (Items 2 and 6) By February 2009, each of these accounts had been charged off. Applicant's delinquent accounts are covered in subparagraphs 1.a through 1.k as follows: 1.a (\$606); 1.b (\$2,415); 1.c (\$1,961); 1.d (\$99); 1.e (\$527); 1.f (\$400); 1.g (\$1,626); 1.h (\$1,178); 1.i (\$4,577); 1.j (\$692); and 1.k (\$1,021). (Item 2) Credit reports show that none of these accounts were addressed before Applicant received the SOR in May 2014. (Items 6 and 7) In his post-FORM materials, applicant claimed two of the listed debts are duplications, specifically the accounts covered in subparagraphs 1.f and 1.j. (Items 9, 10 and 13) Applicant's 1.f and 1.j debts are manifest duplications and represent the single debt of the same underlying creditor. (Items 5-7, 9-10, and 13) Applicant's duplication claims are corroborated by his credit reports and are accepted.

Background information from Applicant's security clearance application reveals that Applicant has been gainfully employed on a full-time basis since at least March 1995. (Item 4) There is nothing in his clearance application to confirm any periods of underemployment or temporary layoffs during this lengthy 20-year stretch of employment. No family disabilities or extraordinary medical expenses are noted in either Applicant's credit reports or response.

To be sure, Applicant did rely some on his father for household expenses while he resided with him. Applicant became indebted for his father's funeral expenses associated with his father's passing in 2008. (Item 8) Loss of expense-sharing from his father is not enough, however, to explain why Applicant has been unable to manage his consumer accounts, avoid the charge-offs documented in his credit reports, and address his debts before the issuance of the SOR.

Since receiving the SOR, Applicant addressed three of his smaller debts. In his post-FORM submissions, he documented his settlement of his creditor 1.a debt with a payment of \$374 and his creditor 1.d debt with a \$99 payment. (Items 2, 11, and 12) And Applicant documented his payment arrangement with creditor 1.f/1.j. His agreed payment terms require him to make four monthly payments of \$142, commencing in June 2014. (Item 2) In his post-FORM submissions, he documented his three partial payments totaling \$427 to his 1.f/1.j creditor. (Items 13 and 14)

Applicant assured he and his wife are meeting their bills and family needs with his increased income. (Items 2 and 8) While Applicant promised to address his remaining debts listed in the SOR, he has made no documented follow-up efforts to pay any of the remaining debts. Instead, he has relied on these remaining debts falling off his credit report once they "hit the 7-year mark" in July 2015. (Item 8)

That several of Applicant's remaining debts (i.e., creditors 1.b, 1.c, 1.e, 1.g through 1.i, and 1.k) may be close to removal from his credit report is not in any way indicative that he has addressed the underlying debts with payments or payment plans when he became financially able to do so. (Items 6-8, and 9) Possible explanations for the anticipated removal of his still outstanding debts from his credit report include settlement, disputed listing, and passage of time. Applicant has not addressed any of these possibilities in sufficient detail to identify the basis of his claims of anticipated removal of his remaining debts from his credit report. Nor does the administrative record reflect any financial counseling initiatives by Applicant.

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 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 accumulation of delinquent debts over a considerable number of years that he failed to address with the resources available to him. Applicant's recurrent problems with managing his finances over an extended number of years (at least since 2009) reflect lapses of judgment in administering his financial responsibilities.

Applicant's pleading admissions of his delinquent debts covered in the SOR negate the need for any independent proof. See ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995 ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"). See, generally, *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's listed debts are fully documented in his latest credit reports and provide ample corroboration of his debts.

Since 1995 at the very least, Applicant has enjoyed steady gainful employment without any visible breaks in work status. Credit reports reveal, though, that Applicant neglected to manage his finances and cure the delinquencies in his listed consumer accounts before the issuance of the SOR.

Applicant's loss of expense-sharing associated with his father's residing with him before his death in 2008, while certainly significant, is not enough to explain his inability to address his accounts in the years following his father's passing. Not until after he received the SOR in May 2014 did Applicant begin to address his delinquent debts. While he has since addressed three of his smaller debts, he provided no documentation

of his exploring payment initiatives with his remaining creditors. His reliance on the anticipated removal of his remaining debts from his credit report provides no credible assurances that he has addressed these debts with payments or payment plans.

With his increased earnings from his employment at his disposal to address his overdue accounts, Applicant could be expected to make more concerted efforts to address his delinquent debts. Applicant's actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), "inability or unwillingness to satisfy debts;" and DC ¶ 19(c) "a history of not meeting financial obligations."

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

Some extenuating circumstances are associated with Applicant's loss of his father's contributions to his household necessities during the many years he resided with him. Applicant's loss of family expense contributions, while potentially extenuating, are not sufficiently developed to definitively explain why he has not been able to deal with his debts in the six years since his father's death in 2008. Applicant has had several years to show more progress in addressing his finances. 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," are entitled to any more than partial application.

Financial counseling could have been helpful to Applicant in devising a repayment plan to address his debts. However, records developed before and after the issuance of the FORM do not reveal any financial counseling initiatives pursued by Applicant before or after his receipt of the SOR. Based on the facts and circumstances presented, 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," is not applicable to Applicant's situation.

Applicant's finances have been marked by recurrent periods of instability for a number of years and show insufficient signs of stabilizing. He still must address his remaining debts covered in the SOR before he can restore his finances to acceptable levels of stability commensurate with holding a security clearance. Afforded opportunities to follow through with updated payment documentation and initiatives, Applicant has failed to document sufficient follow-through on his remaining debts.

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). While Applicant's addressing of three of his delinquent debts is encouraging, his efforts to date do not reflect any headway with his remaining debts. More is needed of Applicant with the increased income currently available to him.

From a whole-person standpoint, the evidence reveals recurrent lapses of judgment associated with Applicant's accumulation of delinquent debts and his failure to address them with the increased income available to him. His partial mitigation efforts over the past year, while encouraging, are not enough to demonstrate a strong track record of timely debt satisfaction.

Without any corroborative 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

Subparagraphs. 1.a, 1.d, 1.f, and 1.j: For Applicant

Subparagraphs. 1.b-1.c, 1.e, 1.g-1.i,
and 1.k: 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

