



**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. 14-03570

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel

For Applicant: *Pro se*

03/10/2015

**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 October 16, 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 October 29, 2014, and requested a hearing. The case was assigned to me on December 5, 2014, and was scheduled for hearing on December 31, 2014. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and five exhibits (AEs A-E). The transcript (Tr.) was received on January 7, 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. For good cause shown, Applicant was granted five days to supplement the record. The Government was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with a summary of payments to his creditor 1.b and a letter from his student loan lender (not included as a debt of concern in the SOR), on confirming his payment of his student loans in September 2012. Applicant's post-hearing submissions were admitted as AEs F-G.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accrued a state tax lien in 2012 in the amount of \$308, (b) incurred an adverse judgment in 2011 in the amount of \$4,095, and (c) accumulated 11 delinquent debts. The alleged delinquent debts exceed \$16,000.

In his response to the SOR, Applicant admitted most of the allegations. He denied the allegations covered by subparagraphs 1.a (claiming the lien had been satisfied), 1.b (claiming a reduced balance of \$2,200), 1.g (claiming the owed amount was deducted from veterans benefits), and 1.h (claiming he disputes the debt as he has in previous years). Applicant claimed he has engaged a credit repair association to help him address his debts. He claimed he got behind in his bills due to his becoming unemployed and starting school in 2011.

Applicant further claimed the money his wife made went towards the payment of necessities (rent, food, and diapers). He claimed that the small hourly wages he made from his work were not enough to pay his bills. And he claimed that he has just recently returned to school, has young children to care for, and needs additional time to begin addressing his creditors.

### **Findings of Fact**

Applicant is a 34-year-old system administrator for 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 spouse in January 2007, separated from her in 2009, and divorced her in December 2011. (GEs 1 and 4; Tr. 39-4) He has no children from this marriage. (GE 1) Unable to locate his first spouse to finalize divorce proceedings, Applicant remarried in April 2010 while technically still married to his first spouse. (Tr. 39-40) He has one child and one stepchild from his current marriage. (GE 1; Tr. 41-42)

Between May 1998 and February 2003, Applicant attended two local colleges. However, he earned no degree from either institution. He attended another college between August 2011 and January 2013 and expects to receive his associate's degree in information technology in January 2014. (GE 1; Tr. 36, 39)

Applicant enlisted in the Marine Corps Reserve in June 2000 and served four years in the Inactive Reserve (IR) before entering on active duty in May 2004. (GE 4) Between May 2004 and December 2010, Applicant was on active-duty status with the Marine Corps. (GE 1) He was administratively separated from the Marine Corps in December 2010 with a general discharge in lieu of a trial on charges of committing adultery. (GEs 1 and 4; Tr. 42-43) Applicant continued his Marine Corps service in the IR between December 2010 and June 2012. (Tr. 43)

## **Applicant's finances**

Following his discharge from active-duty Marine Corps status in 2010, Applicant could not find work and enrolled in a local college with a primary emphasis on information technology. (GE 4; Tr. 32-33). Between April 2012 and April 2014, he held full-time and part-time positions as a technician and security guard. (GEs 1 and 4; Tr. 33-34)

For for the first five months of 2014, Applicant held a full-time position as a system administrator with Company A. (GE 1 and AE C; Tr. 35-36) During this time, both he and his wife were enrolled in college. (GEs 1 and 4) Finding insufficient time to devote to his school work, he returned to part-time security guard work in November 2012. (Tr. 34) With his limited income, he fell behind with his bills. To help with their bills, Applicant's wife maintained a full-time position with a local grocery chain. (Tr. 33) Since April 2014, Applicant has been employed by Company B as a system administrator, but cannot work and draw a salary while his security clearance application is pending. (Tr. 62)

Applicant's accumulated delinquent debts are comprised of the following: a state tax lien in the amount of \$308 (creditor 1.a), a 2011 adverse judgment for \$4,095 (creditor 1.b), and 11 consumer debts exceeding \$16,000 (creditors 1.c-1.m) Applicant has not satisfied any of the listed debts. After claiming in his response that his state tax lien had been satisfied administratively by the state creditor's taxing authority, he corrected himself at hearing and acknowledged the debt remains outstanding. (Tr. 59, 73-74) The only debt he has affirmatively addressed is the creditor 1.b judgment. He assured he has been making \$100 monthly payments to this creditor and has reduced the judgment to just \$1,100. (Tr. 54, 71) Afforded an opportunity to document his payment history,

Applicant provided a historical accounting of monthly \$100 payments since June 2012 and a reported current balance of \$3,000. (AE F) This credited balance is accepted as the current balance owing on the creditor 1.b judgment. Applicant is credited, too, with paying off his student loans (not listed in the SOR) in September 2012. (GE 3 and AE G)

After promising to address his remaining creditors in his interview with an investigator from the Office of Personnel Management (OPM) investigator in May 2104, Applicant has not been able to make payments or complete any repayment plans with any of his remaining creditors. (GE 4 and AE A; Tr. 59-67). Nor has he followed up with his repair firm to identify and validate reported delinquent debts in his credit reports. (Tr. 67-68) While his updated credit report confirmed the removal of a number of his old debts, it does not indicate which ones, or the reasons for the removal. By contrast, his April 2014 credit report listed Applicant's remaining outstanding debts and no reported disputes. (GE 2) Although his December 2014 credit report lists a disputed account (creditor 1.m), it does indicate any reasons for the dispute. (GE 3)

Applicant assured that he wants to repay his listed delinquent debts but cannot do so until he returns to work. (Tr. 67-70) And without a security clearance, his employer will not permit him to return to gainful employment.

Currently, Applicant earns nothing from gainful employment and is basically surviving with his education loans. (Tr. 68-69) His wife is able to supplement his income with part-time work that pays her \$15 an hour as a part-time medic. (Tr. 68) She nets just \$1,031 bi-weekly and is able to help with grocery bills and rent.

## **Endorsements and awards**

Applicant was well regarded by the supervisor of the firm who he worked for in 2014. (AE C) This supervisor described Applicant as polite and professional, and above reproach. He assured that Applicant would be welcomed back at his company. During recent years in college, Applicant excelled in college and earned recognition on the school's honor lists for both 2012 and 2013. (AEs B and D) He also completed his requirements for network certifications in 2013 and 2014. (AE E)

## **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 may not 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 a state tax lien, and adverse judgment, and 11 delinquent consumer debts exceeding \$16,000. Applicant's accrued debts are attributable to both recurrent unemployment and underemployment problems following his military discharge and ensuing judgment lapses in the management of his financial affairs. His debt delinquencies invite 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.

Most of Applicant's accrued debts are the result of extenuating circumstances. His recurrent incidences of unemployment and underemployment following his 2010 discharge from active-duty military service imposed considerable cost burdens on himself and his wife in managing their finances. These cost impositions were significant and entitle him to 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.”

Most of Applicant’s recent payment problems are associated with his lack of work pending the outcome of his security clearance application. To Applicant’s credit, he has paid down his creditor 1.b judgment and utilized a credit repair firm to validate his remaining debts. Still, more could have been expected of Applicant from the income he and his wife earned from their jobs between April 2012 and April 2014. So, while there are considerable extenuating circumstances associated with his delinquent accounts, too many of Applicant’s debts remain outstanding to enable him to take full advantage of the “acted responsibly” prong of MC ¶ 20(b). Under these circumstances, Applicant’s modest repayment efforts to date entitle him to no more than partial application of MC ¶ 20(d).

Based on Applicant’s limited repayment efforts to date, mitigation credit is not available to him. 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 his remaining unpaid debts.

Applicant’s limited repayment efforts (i.e., with creditor 1.b), and failure to attempt any negotiated repayment plans reflect too little progress to enable him to demonstrate satisfactory repayment 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 with his creditor 1.b judgment creditor and ongoing efforts with the assistance of his credit repair firm to verify the legitimacy of his remaining creditors, but not enough to facilitate safe predictions about his ability to manage his finances in the future. With his remaining creditors, he has made no tangible payment progress, and has failed to demonstrate sufficient payment track record that meets minimum Appeal Board criteria. While he is well-regarded by his supervisor and has produced solid academic credits, his record of civic and community contributions is still very limited.

Overall, Applicant’s repayment actions to date, although somewhat understandable considering his recurrent problems with finding gainful full-time employment, are insufficient to meet mitigation requirements imposed by the guideline governing his finances. More time is needed for Applicant to restore his finances to

stable levels consistent with minimum clearance eligibility requirements. 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.c-1j:  
Subparas. 1.b:

Against Applicant  
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.

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Roger C. Wesley  
Administrative Judge

