



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



In the matter of:)
)
-----) ISCR Case No. 07-09932
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

March 26, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on November 15 2007, and requested a hearing. The case was assigned to me on December 3, 2007, and was scheduled for hearing on January 29, 2008. A hearing was held on January 29, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (himself) and one

exhibit. The transcript (R.T.) was received on February 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated three debts exceeding \$16,000.00. Under Guideline E, he allegedly falsified his security clearance application of October 2006, by denying repossession of a vehicle and debts over 180 and 90 days delinquent, respectively.

In his response to the SOR, Applicant admitted two of the alleged debts, but explains that the first creditor (creditor 1.a) went out of business and disputes the amount owed on the deficiency claimed by creditor 1.c following his vehicle repossession. Applicant denied the third alleged debt altogether (creditor 1.b), claiming the debt was supposed to have been paid from escrow funds when he purchased his first home in 2001. Responding to the falsification allegations covered by Guideline E, Applicant denied any intentional omission of the information called for in his security clearance application.

Findings of Fact

Applicant is a 33-year-old computer technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married his current spouse in April 1995 and has two children (ages 11 and 12). Applicant provides financial support for his wife and children.

Applicant incurred three major debts between 1999 and 2004 that collectively exceed \$16,000.00. He and his wife purchased furniture from a furniture retailer in 1999 and made regular payments on the account for several years. The store reportedly closed in 2001, and left Applicant no forwarding address to send his payments. Credit reporting records indicate that the furniture account has since been assigned to a collection agent (creditor 1.a) with a carried balance of \$1,307.00 (see ex. 3). Applicant was last contacted about the debt by creditor 1.a in 2003 (R.T., at 27-28). Applicant elected not to take care of the debt at that time, and has had no contact with the creditor since that last contact.

Applicant purchased furniture from creditor 1.a in April 2006 for \$1,307.00 (ex. 2), shortly after his military discharge from the Army in 2001. After making payments on the account for several months he was informed that the creditor had gone out of business with no forwarding address (R.T., at 27). Applicant expresses a desire to pay this debt, but has not been able to make contact with the creditor to ascertain what he owes (R.T., at 29). He indicates a willingness to pay the debt if the creditor could furnish him an accurate record of the debt (R.T., at 29). To date, however, he has not

provided any documentation of his past efforts to reach the creditor and address this debt.

Besides his furniture debt, Applicant incurred a significant utility debt (creditor 1.b) in April 2002 (ex. 2). Applicant accumulated this debt while in the Army Reserves and claims the debt was arranged to be discharged from an escrow account established to fund his first home purchase in 2001 (R.T., at 30-31). While he claims to have requested his wife to take care of the bill during his absence and disputed this debt several times with credit reporting agencies, he provides no documentation of the escrow account in question, his requests to his wife to resolve the debt, or his disputes of the debt with either the creditor or the credit reporting agencies. The debt remains on his latest credit report (see ex. 2) as an unpaid debt in collection status, and to date has not been addressed by Applicant in any way that can be documented.

Applicant's third listed debt (creditor 1.c) on the SOR reflects a deficiency on a vehicle that was repossessed by the creditor in January 2003. Records report that Applicant purchased the vehicle in April 2000 for the amount of \$20,377.00 (see ex. 2). Unable to afford the payments, he voluntarily returned the vehicle to the seller. Applicant's credit records report that the sum of \$15,272.00 was owing on the vehicle when the seller repossessed it (ex. 3). Although Applicant claims he was never credited with any proceeds of the sale of the repossessed vehicle (R.T., at 31), he provides no documentation of his claims. The delinquent debt documented in his April 2007 credit report lists a deficiency balance of \$11,881.00 as of December 2006 (see ex. 3). This would appear to indicate at least a partial credit on the carried deficiency that was reported in January 2003 before the creditor's repossession. Without more to corroborate Applicant's claims, inferences warrant that he was credited with some reduction of the deficiency balance. Whether the reduction represents credit proceeds from the public sale of the vehicle or something else is unclear.

Based on his personal income statement, Applicant nets about \$2,800.00 a month from his work (see ex. 3). His monthly expenses total \$1,220.00, and his monthly debts total \$2,612.00 (without any indicated amounts apportioned to cover the listed debts in the SOR). This leaves him with a reported net negative remainder of \$1,032.00 (see ex. 3). Applicant believes his negative monthly remainder is a little lower now (around \$900.00) according to Applicant (R.T., at 38). Applicant says his current net assures he is able to keep up with his current expenses and debts (including the car payment on the 2007 Dodge Charger he purchased last year) despite his negative remainder (R.T., at 38-40). However, he provides no budget or other road map to show how he can address any of his covered debts with the resources he currently has available to him.

Applicant has sought no formal counseling regarding his finances. He assures he is not behind with any of his bills, but could identify no source of emergency relief to help him with his listed debts.

Asked to complete a security clearance application (e-qip) in October 2006, Applicant omitted his car repossession and debts over 180 and 90 days delinquent, respectively, when responding to questions 27B and 28A/B. He was not exactly sure why he answered the questions in the negative and attributed his omissions to speed and confusion and cites his acknowledged repossession and delinquent debts in the security clearance application (SF-86) he completed in May 2005 (see ex. A; R.T., at 40-43) as documented proof of his claimed mistaken omissions. In this 2005 SF-86 he did answer affirmatively to questions 35, 38 and 39 and listed his repossession and auto loan on the same vehicle while omitting his other two debts (see ex. A).

Several months after completing his e-qip, Applicant was interviewed by an agent from OPM (R.T., at 44-47). Applicant recalls reviewing his credit report with the agent and answering questions about certain debts listed in the credit report (R.T., at 46-48), but does not recollect the precise order of the questioning. Considering Applicant's initial acknowledging of his car repossession and debts over 180 and 90 days delinquent in his 2005 SF-86 and his corrections when asked in his scheduled interview, his claims of inadvertent omission are accepted as both plausible and credible. Inferences warrant that Applicant's initial omissions were not deliberate, and not made with any intent to intentionally mislead the Government.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

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.”

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.”

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, 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 common sense 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. 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 any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing on the applicant’s eligibility to obtain or maintain a security clearance. The required showing of material bearing, 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, consideration must take into account 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 burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government’s case.

Analysis

Applicant is a computer technician for a defense contractor who accumulated a number of delinquent debts (both medical and consumer-related) over a four-year period spanning 1999 and 2004. Considered together, and without resolution, they raise security significant concerns. Of initial security concern, too, are Applicant’s

omissions of his vehicle repossession and delinquent debts in the security clearance application he completed in 2006.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information" and place the person "at risk of having to engage in illegal acts to generate funds." Applicant's accumulation of delinquent debts and his past failure to address them warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a) "inability or unwillingness to satisfy debts" and DC 19(c), "a history of not meeting financial obligations."

Applicant's debts are attributable in part to confusion and misunderstandings over the debts. One of the creditors Applicant claims went out of business years ago (creditor 1.a). A second debt he thought was paid from the escrow created for the purchase of his home (creditor 1.b). A third debt he claims was never substantiated to his satisfaction (creditor 1.c). He provides no documentation, however, to corroborate his claims, and these debts remain unresolved, significant debts on his credit reports. Afforded an opportunity to do so, Applicant has not provided any documented plans for addressing any of the three listed delinquent debts with the resources available to him. Nor has he sought financial counseling to explore other ways of discharging his three listed debts.

Applicant's explanations for his three debts are plausible and reasonable to a degree. They certainly show why he may have harbored initial confusion and uncertainty about addressing them. But once he was shown a copy of his credit report by the OPM agent who interviewed him in late 2006, he was placed on notice of the outstanding status of these three listed debts, and afforded a clear opportunity to investigate them and dispute them if he disagreed with them. Extenuating circumstances sufficient to warrant application 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," of the Guidelines for financial considerations are not demonstrated in this record.

Mitigation credit is not available either to Applicant based on his proofs. Without any credible demonstration of concrete steps to resolve his three listed debts or seek financial counseling, none of the mitigating conditions are available to Applicant.

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 (as here).

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant's debt accumulations does not enable Applicant to surmount security concerns either. Documented efforts to address the debts, endorsements, employment history, and evidence of extenuating circumstances all could have a bearing on Applicant's demonstrated reliability and trustworthiness, but are not available in this record. Without more, it is difficult to draw convincing conclusions about Applicant's overall trustworthiness based on factors not covered in the mitigation conditions of the guideline for financial considerations.

Taking into account all of the facts and circumstances surrounding Applicant's accumulated debts, Applicant does not mitigate security concerns related to his proven debt delinquencies. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.c of the SOR.

Applicant's debt omissions in his e-qip

Posing potential security concerns, too, are Applicant's documented omitted repossession and delinquent debts in the e-qip he completed in October 2006. He attributed his omissions to inadvertence and cites his prior listing of his repossession and related deficiency in an earlier SF-86 as evidence of his lack of any intent to deliberately mislead the Government. His claims have merit.

From a whole person perspective, Applicant presents as an essentially honest applicant who acknowledged his repossession and debt delinquency in a previous security clearance application and made prompt good-faith corrections of his e-qip omissions when inquired about his debts in an ensuing OPM interview. His e-qip omissions appear to be isolated candor lapses and not indicative of any overall trust problem.

Both Applicant's accepted explanations and prompt, good faith corrections of the omissions in his ensuing OPM interview enable him to take advantage of two of the mitigating conditions available under Guideline E: MC 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts and MC 17(f), "the information was unsubstantiated or from a source of questionable reliability." Based on both his own explanations and his prompt, good-faith efforts to correct the omissions in his e-qip when initially asked by the OPM agent, Applicant is able to successfully refute the allegations of falsification in the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

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

Sub-paras. 1.a through 1.c: AGAINST APPLICANT

GUIDELINE E: (PERSONAL CONDUCT): FOR APPLICANT

Sub-paras. 2.a and 2.b: 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