



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



In the matter of:)
)
-----) ISCR Case No. 07-06722
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 22, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On November 3, 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 14, 2007, and requested a hearing. The case was assigned to me on December 10, 2007, and was scheduled for hearing on February 19, 2008. A hearing was held on February 19, 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 five exhibits; Applicant relied on one witness (himself)

and one exhibit. The transcript (R.T.) was received on February 27, 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 one debt: a credit card debt that resulted in a judgment entered against Applicant in November 2006 for \$16,970.00. In his response to the SOR, Applicant admitted the alleged judgment without explanation.

Findings of Fact

Applicant is a 31-year-old installer for a defense contractor who seeks a security clearance. The allegation covered in the SOR and admitted by Applicant is adopted as a relevant and material finding. Additional findings follow.

Applicant accumulated several credit card debts with creditor 1.a between 1996 and 2002, one in 1996, another in 2000, and a third in 2001 (see exs. 3 and 4). He opened all three accounts while an undergraduate student between 1996 and 2001 (see exs. 1 and 3: R.T., at 25-30). As a college student, he had a low paying job and used the credit cards for school expenses and dining out with friends. Once he left school, he fell behind in all three of his credit card accounts. Because of his low income job and high expenses, he was not able to keep up with the monthly payments. After unsuccessful efforts to obtain reduced monthly payments from the creditor through a debt consolidation service (R.T., at 25-26), he stopped making settlement offers and monthly payments (see ex. 3).

By 2006, one of the accounts (the one he opened in 1996) had a high balance of \$11,000.00 with monthly payments of \$300.00 (ex. 3). Another (*i.e.*, the account he opened in 2000) had balance in excess of \$6,000.00 (see ex. 4). With funds he had saved and proceeds from a debt consolidation loan, he was able to negotiate settlements with the creditor on both of the earlier accounts. He settled the 1996 account in 2006 for a lump sum payment of \$9,000.00, and the other (also in 2006) for a lump sum payment of \$6,000.00 (see ex. 3; R.T., at 42-43). However, he was unable to settle the listed 2001 account with the same creditor. His lump sum \$8,000.00 plus offer in 2006 was rejected by this creditor. By 2006, this debt has accumulated over \$5,000.00 in interest and fees alone and had a total balance in excess of \$16,000.00.

While Applicant was overseas in 2006, creditor 1.a filed a complaint to recover the balance owing on the 2001 account in delinquent status (R.T., at 29-30). When Applicant did not answer or respond to the complaint, the creditor obtained a judgment against him in the amount of \$16,970.00. Applicant assures that he was overseas on a job for the better part of 2006 and received no statements or phone calls from his parents concerning the debt (R.T., at 30-32).

Not until Applicant returned from his overseas assignment in December 2006 did he learn of creditor 1.a's entered judgment against him (R.T., at 31). Records reflect that creditor 1.a obtained a judgment against Applicant in November 2006 (see ex. 5). Applicant provided no proof of his ever challenging the judgment, appealing the judgment, or satisfying the judgment by either payment in full or completion of a settlement arrangement with the creditor. So, at this time, the judgment remains outstanding and enforceable in its entirety.

More recently (in February 2007), Applicant made a settlement offer to creditor 1.a to settle the judgment debt for around \$9,000.00, payable over a period of years (R.T., at 33). Creditor 1.a counter-offered with a suggested settlement of \$12,000.00, payable in two installments of \$6,000.00 each (R.T., at 34). Applicant could not afford the payment terms offered by creditor 1.a and declined the offer (R.T., at 34).

Applicant nets just \$2,620.00 in monthly income (R.T., at 38). He currently has a monthly remainder after expense deductions of around \$1,000.00 (R.T., at 36-38). Mentally, he has written off the \$16,900.00 plus judgment but recognizes it is still reported in his credit report.

Applicant owns no real estate. He owns approximately \$2,000.00 in stocks and bonds. At present, he does not know how he can satisfy creditor 1.a's judgment, which now exceeds \$17,607.00, based on his most recent credit reports (see exs. 4 and 5).

A considerable percentage of the creditor 1.a judgment reflects interest and fees. Without copies of the pleadings, orders, and the judgment itself, it is not possible to break down the judgment by principle and interest accrued.

Applicant is considered dependable and hardworking by his supervisor and a trusted and reliable team player by a senior co-worker who has worked with Applicant for a number of years (see ex. A).

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." See Adjudicative Guidelines (AG), ¶ 18.

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 an installer for a defense contractor who accumulated several credit card debts with the same creditor while a college student (between 1996 and 2001).

While he was later able to settle two of the accounts with lump sum payments from savings and a consolidation loan, he could not settle the third account. This delinquent account was subsequently reduced to a judgment which remains unpaid and outstanding. As a large unresolved judgment, the raises security significant concerns.

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.” See AG, ¶ 18. The still outstanding judgment against Applicant and his inability to resolve it warrants 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 ©), “a history of not meeting financial obligations.”

Applicant’s judgment debt is attributable in part to immaturity and living beyond his means while a college student. His situation is not sufficient, however, to demonstrate 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 AG ¶ 18.

Because Applicant’s creditor1.a debt was reduced to judgment and is enforceable, it is not subject to any controlling statutes of limitation in Applicant’s state. Without any documented Applicant payment record or arrangement for satisfying the judgment, the judgment debt is not mitigated. Even though Applicant has been able to settle his other debts with this same creditor, the remaining judgment debt is simply too large to safely discount and mitigate. For so long as Applicant is exposed to and enforceable judgment, he remains at risk to levies on his bank accounts, personal, and any real property he might acquire. Facing such risk prospects, Applicant will be subject to the financial guideline’s core security concerns: the “risk of having to engage in illegal acts to generate funds.” See AG ¶ 18

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 is insufficient to enable Applicant to surmount security concerns independent of the express disqualifying

conditions covered by AG¶ 18. He is well regarded by his supervisor and co-workers, which is to his credit. And he has shown responsibility in resolving his other credit card accounts and debts, based on his latest credit reports. Without more to demonstrate progress in resolving his large judgment debt, however, it is difficult to draw convincing conclusions about his 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 covered judgment debt and overall presentation of payment histories and endorsements, Applicant does not mitigate security concerns related to his covered judgment debt. Unfavorable conclusions warrant with respect to the allegation covered by sub-paragraph 1.a of 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-para. 1.a: **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