



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



In the matter of:)
)
-----) ISCR Case No. 07-07278
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 September 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 7, 2007, and requested a hearing. The case was assigned to me on December 3, 2007, and was scheduled for hearing on February 20, 2008. A hearing was held on February 20, 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 six exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) was received on February 28, 2008. Based upon a review of the

case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated eight delinquent debts exceeding \$27,000.00: specifically, four consumer debts exceeding \$11,000.00, a student loan debt of \$1,710.00, back child support totaling \$8,841.00, a military credit union account of \$4,112.00, and an IRS debt for taxes owed in the amount of \$1,600.00. Applicant admitted the alleged debts with explanations. He claimed to be making monthly payments on three of his consumer debts and his IRS debt. He claimed to have paid his alleged back child support and will try to address the remaining two debts.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of the status of his admitted debts (including payment history on his back child support and taxes owed to the IRS). For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded three days to respond. Within the time permitted, Applicant supplemented the record with a running balance of his back child support payments and a prior billings transactions statement, which Applicant claims to reference his payment history with a certain creditor named in the SOR. Department Counsel did not object to either of Applicant's two submissions, but noted that the prior billings statement contains different account numbers for the creditor identified by Applicant in his submission. Applicant's exhibits are admitted as exhibits A and B, and will be assigned the appropriate weight they warrant.

Findings of Fact

Applicant is a 42-year-old electronics 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 first wife (W1) in April 1992 and divorced her in December 1999 (ex. 1). He has two children from this marriage (ages 14 and 15) who reside with their mother. Applicant remarried (W2) in 2001 and has no children from this marriage. He has recently separated from W2 (R.T., at 46).

Following his second Dul offense in 1995, Applicant's security clearance was revoked, in October 1997. Records reflect that he received a general discharge for misconduct after his security clearance was revoked (see exs. 2 and 3; R.T., at 37). Applicant successfully completed an alcohol and drug rehabilitation program in February 1999 (see ex. 3), and remained in the military until January 2000 (R.T., at 37-38).

Applicant acknowledges to have lived beyond his means somewhat while married to W1 (R.T., at 47-48). Unable to find work after his exit from the Army in 2000, he fell behind with a number of his debts. Records report that he accumulated a number of delinquent consumer debts between 1997 and 2004, attributable to his divorce. His delinquent debts covered in his credit reports include four consumer accounts exceeding \$11,000.00 (including a deficiency balance on a repossessed vehicle in the amount of \$5,710.00, back child support exceeding \$8,841.00, a military credit union debt approximating \$4,112.00, and taxes owed the IRS in the amount of \$1,600.00).

Applicant claims major progress in paying off his listed debts. He claims to have reduced the listed balance with creditor 1.a (a deficiency balance owed on returned utility equipment in the 1999-2000 time frame) to \$437.00 in October 2007, and no longer receives any bills from this creditor (R.T., at 38-39). However, Applicant provides no documentation of promised account information detailing his payments to creditor 1.a and current status of the account.

Applicant claims he has been making regular payments on his creditor 1.b account (see ex. 6) and to have made considerable progress in clearing this debt (R.T., at 40-41). He has made recent payments on the account and committed to furnishing bank statements that reflect his debt payments on this account (R.T., at 40). The post billing transaction ledger (ex. B) that reportedly covers this debt lists account numbers that do not appear to match the account number in Applicant's credit report (ex. 5) for this creditor. Further, the prior billings transaction document does not reflect the balance still owing on this account. Without more clarification, little payment credit can be accorded Applicant.

Addressing the status of creditor 1.c, Applicant admits only to being a card holder on a credit card account opened by his first wife (W1) before their divorce in December 1999 (see exs. 1 and 3; R.T., at 41-42). He claims he never used the card and never assumed responsibility for its payment (R.T., at 42). Applicant disputes this debt but provides no documentation of any correspondence with either the creditor or the credit reporting agency.

Applicant admits to incurring delinquent debts with creditors 1.d through 1.h. Creditor 1.d represents a student loan that he claims to have partially paid down under a payment plan he arranged with the creditor (see ex. 3; R.T., at 42). Under his payment plan with the creditor, he made monthly payments of \$107.00 for about five months, before he quit making payments altogether in December 2007 (see ex. 6). Currently, he does not know what balance remains on this debt (R.T., at 42).

With respect to creditor 1.e, Applicant co-signed for a 1998 car purchased by his step-son from his marriage to W1. He recollects his step-son's paying around \$11,000.00 for the vehicle (R.T., at 43, 59). When the step-son stopped making payments on the car in 2000, the seller called Applicant to ascertain Applicant's taking over his step-son's payments (R.T., at 60). Applicant declined the seller's request at the time and only learned of the vehicle's repossession (sometime in 2000) when he got his

own credit report in 2007, and checked the status of the vehicle. Applicant has just obtained his step-son's telephone number and will attempt to reach him to ascertain his payment intentions.

Applicant claims to have paid off his back child support (creditor 1.f), which was significant according to his December 2006 credit report (*i.e.*, \$8,841.00 as of September 2006). One of his credit reports (ex. 6) reports a zero balance, and Applicant corroborated his pay-down of his listed back child support with his post-hearing submission. An admitted financial activity report reflects a significant pay-down, and only \$57.85 owing as of February 2008 (see ex. A). Based on Applicant's payment assurances (R.T., at 27-28 and his documented support, Applicant's payment claims covering creditor 1.f are accepted.

By contrast, Applicant has not been able to make any tangible progress in resolving the last two listed debts in the SOR. He assures he will look into the status of creditor 1.g's debt (a military allotment he initially established in 1992) and 1.h's debt (his IRS debt), and pay any remaining amounts owing on these two debts (see ex. 6; R.T., at 44-45). To date, though, he has not provided any documented repayment plans or initiatives. Nor he has sought or obtained financial counseling.

Applicant nets \$2,000.00 in monthly income (R.T., at 48-49). He currently has a monthly remainder after expense deductions of around \$173.00 (R.T., at 54).

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 electronics technician for a defense contractor who accumulated a number of delinquent debts (consumer, student loan, child support, and tax liability) following his separation from the U.S. Army in 2000. Most of his listed delinquent accounts and continue remain unresolved. Absent documented discharge or payment initiatives with the listed creditors, these debts raise security significant concerns.

In Applicant's case, his still outstanding delinquent debts and his failure to document the debts he disputes or has paid 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.” These disqualifying conditions cover the core concern of AG ¶ 18: poor self-control, lack of judgment, or unwillingness to abide by rules and

regulations, which, both individually and collectively, can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Applicant's accumulated debts are attributable in part to immaturity and living beyond his means during his two marriages. His situation presented does not 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.

With the exception of his satisfied back child-support obligations, none of Applicant's covered debts are documented to have been paid. Several of them, however, are quite old. Of this group of debts, two appear to be covered by his state's statute of limitations: specifically, creditors 1.c and 1.e. The state statute of limitations in Applicant's state for claims based on a written contract is four years. See 16.004(a)(3) of T Civ. Prac. and Rem. Code, §§ 16.051 (statute of limitations for contracts and claims not otherwise provided for) and 16.004(a)(3) (statute of limitations for debts). Applicant's listed debts with creditors 1.c and 1.e all appear to be covered by the State's statute of limitations, and are treated, as such, herein as debts that are limitations barred.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to absorb 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. They have never been equated with good-faith efforts, though, 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 new Guidelines should be considered in light of all the circumstances surrounding the existing debts, and must take account of the Applicant's entire history of demonstrated trust and responsibility. Viewed in this whole person light, the controlling state statute of limitations for written contracts and debts are entitled to be accorded significant mitigation weight in evaluating Applicant's overall financial risk with respect to these specifically covered debts.

Based on Applicant's afforded reliance on his State's four-year statute of limitation to avert enforcement risk with respect to his accorded limitation-barred debts, mitigation credit is available to Applicant. By virtue of the age and non-enforcement status of the debts (only creditors 1.c and 1.e), 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 applicability to these specific limitation-barred debts.

With respect to Applicant's remaining unresolved debts, mitigation credit is only partially available based on his proofs. Without any documentation of his payment efforts and disputes concerning most of these debts (*i.e.*, creditors 1.a and 1.b, creditor 1.d, and creditors 1.g and 1.h), important corroboration is lacking. And while the Appeal Board has never held the lack of corroboration to be dispositive when assessing debt disputes (see ISCR Case No. 02-03186 (App. Bd. Feb. 2006)), it has certainly considered it an important factor in evaluating the intrinsic reliability or weight of evidence. See ISCR Case No. 01 -02677 (App. Bd. October 2002). Not helpful either to Applicant's mitigation efforts is his lack of any demonstrable steps to seek financial counseling.

Without more documented information to demonstrate he is addressing his listed debts and making use of financial counseling, he cannot safely mitigate all of the Government's financial concerns. Only Applicant's back child support obligations are adequately documented and entitled to mitigation treatment.

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. Without more to demonstrate progress in resolving his remaining debts, 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 unsatisfied debts and overall presentation of payment histories, Applicant does not mitigate security concerns related to his still outstanding debts. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a, 1.b, 1.d, 1.g, and 1.h of the SOR. By contrast, favorable conclusions warrant with respect to sub-paragraphs 1.c, 1.e, and 1.f 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
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	FOR APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	FOR APPLICANT
Sub-para. 1.f:	FOR APPLICANT
Sub-para. 1.g:	AGAINST APPLICANT
Sub-para. 1.h	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

