



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-14841
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

September 9, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On May 14, 2008, 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 June 3, 2008, and requested a hearing. The case was assigned to me on June 16, 2008, and was scheduled for hearing on July 15, 2008. A hearing was held on July 15, 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 two exhibits. The transcript

(R.T.) was received on July 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of his real estate closing associated with his creditor 1.d debt, an updated income statement, and any initiated debt consolidation arrangements (R.T., at 82-83). For good cause shown, Applicant was granted 14 days, to July 29, 2008 to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with a faxed cover sheet and a an updated income/expense statement. Department counsel did not object to these post-hearing submissions. Applicant's post-hearing exhibits were admitted as exhibits C and D and considered.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated three debts exceeding \$40,000.00, (b) expressed no intention to pay one of the alleged creditors, and ©) was charged in 1986 with fraud/insufficient check on two separate occasions, ffor which he pled *Nolo Contendere* and was fined in each instance.

For his response to the SOR, Applicant admitted two of the debts and denied the third. He disputed one debt the alleged creditor 1.a debt) and denied indicating he would not pay the alleged creditor 1.b debt. Applicant admitted the insufficient debt allegations, but claimed they are very aged and should not be security significant.

Findings of Fact

Applicant is a 46-year-old principal technical editor 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 enlisted in the Air Force in 1981 and was an honor graduate of his basic training class. He made staff sergeant and served in every major military conflict (R.T., at 45-46). He retired from the Air Force in February 2004 with 22 years of service (see ex. B). With so many years of military service, Applicant assures he would never do anything to hurt his country. His meritorious Air Force service awards are numerous and attest to his trustworthiness during his military career (R.T., at 47).

Applicant married his first wife in 1987 and divorced her in May 2004 (see exs. 1 and 2; R.T., at 75-78). He has one child from this marriage (R.T., at 72-73). Unfaithfulness (first by his spouse and then by Applicant) played a role in their estrangement (ex. 2). Applicant attributes most of his creditor 1.b debt to his ex-wife's using the credit card to redecorate their house (R.T., at 29-31). After they separated in October 2003, his ex-wife continued using the creditor 1.b joint credit card for her

personal needs and raised the credit card balance considerably on the card before the account became delinquent in 2004 (R.T., at 56, 74-78). With accumulated interest accruing on the creditor 1.b account, it reached the \$36,000.00 level listed in his credit reports (see ex. 2; R.T., at 32-33). After the divorce, he began receiving harassing letters and phone calls from the creditor's collection agency. After reporting the calls to the collection agency, he stopped receiving calls from the agency (see ex. 2). By the terms of their ensuing divorce decree, though, Applicant became primarily responsible for paying the credit card bill. He was also assigned responsibility for paying his ex-wife \$600.00 a month in child support and \$700.00 a month from his military retirement (ex. 2). Applicant has been compliant in these court terms (see ex. 2; R.T., at 51).

When interviewed by the Office of Personnel Management (OPM) in June 2007, Applicant indicated to the investigator that he did not believe the creditor 1.b debt was his responsibility because of the way his ex-wife ran up the card after their separation and the harassing calls he received from the creditor's collection agent (see ex. 2). Despite his efforts to try and settle with the creditor, the creditor would not make a settlement offer that he could handle (R.T., at 56-57). As a result, he made a decision not to pay this account in full as it was constituted, and not to disavow the debt altogether. The summary of his OPM interview was attached to the interrogatory response, which Applicant approved in a signed, sworn statement he affixed his signature to in February 2008 (see ex. 2). His OPM account reconciles with his hearing testimony and is approved. He continues to assure that if creditor 1.b is willing to come up with a payment plan, he will start making payments on the debt (R.T., at 31-32, 59-61). But to date, the creditor has not offered him a plan.

Applicant remarried in May 2005; his current wife has two children from another marriage (R.T., at 72). Following their marriage, they purchased a home in the state of their residence at the time for around \$220,000.00 (see exs. 2, 3 and 4; R.T., at 40). He assigned a \$225,000.00 to \$245,000.00 value range to the home in his OPM interview (ex. 2). At the time of his OPM interview, he and his wife had put the home up for sale (R.T., at 34-35). When the real estate market in the state crashed in 2007, he encountered difficulties in selling this home (R.T., at 35). After his wife had to quit working for medical reasons in June 2007, Applicant struggled with the mortgage payments for a number of months before ceasing to make payments altogether (in November 2007), and permitting his mortgage to become delinquent (R.T., at 36-38). He was eventually able to find a buyer for the home, but at a steep discount, and continues to withhold his payments on his creditor 1.c mortgage (R.T., at 64).

Applicant's sale agreement that he completed with a buyer in June 2008 contained an agreed sale price of \$165,000.00 for the property, which was appraised in 2007 at \$168,757.00 (see ex. B). Closing on the agreed sale was to take place in July 2008. However, because the agreed sale price was substantially below the carried mortgage on the property, Applicant is looking to the mortgagee for an approved short sale that would have committed the mortgagee (creditor 1.d) to accept considerably less than the face amount of the mortgage (R.T., at 38, 62-63). At hearing, the mortgagee had not yet conveyed its approval of a short sale on the property.

In hopes of securing creditor's approval of a short sale at the agreed sale price, Applicant asked for an additional two weeks to obtain the necessary documented approval from creditor 1.d. While still hopeful, Applicant was not able to obtain the creditor's short sale approval within the time permitted to supplement the record. (see ex. C). At this time, both the time reserved for the closing and the period allotted for supplementing the record have expired. Whether Applicant has been able to secure any of the back-up buyers he mentioned at the hearing, an additional time from creditor 1.c to pursue a short sale is unclear (R.T., at 65-67).

With no further word on the status of the sale of the property or the mortgagee's willingness to accept a short sale to discharge its mortgage on the property, there is no way to make any safe assumptions that Applicant will be able to complete his proposed sale of the property on terms that he can handle.

Without any sure sale prospects of the property secured by a mortgage with creditor 1.d, or documented continuing payments on the mortgage pending sale, Applicant remains at risk to creditor foreclosure. Depending on the creditor's election of available remedies, creditor 1.d could either foreclose on the property through non-judicial foreclosure procedures, or it could resort to judicial foreclosure and preserves its opportunity to seek a deficiency judgment (depending on the court-approved appraisal of the property in question). A deficiency, if court-approved, could add significant debt to Applicant's existing debt totals.

Besides his creditor 1.b and 1.d debts, Applicant accumulated a small delinquent debt with creditor 1.a in the amount of \$99.00. Applicant assures he paid this debt to the creditor's predecessor and does not owe anything on the account (R.T., at 27-28). Inexplicably to him, the debt has disappeared and reappeared on his credit reports. However, it is reported in his latest credit report as a collection item (see ex. 3). This is a very small debt, though, on a cable account that Applicant assures he canceled. Based on his testimony, the size of the debt, and his exhibited overall honesty, inferences warrant that this debt was successfully disputed by Applicant and deleted from his credit reports.

Records show that in 1986 Applicant was charged with fraud/insufficient funds check on two separate instances. He pled *nolo contendere* to each of the charges and was fined and required to make restitution. Applicant assures that he complied with the court's conditions in each instance (R.T., at 43-44, 67-68).

Afforded an opportunity to provide updated budgets for both himself and his current wife, Applicant provided a budget for himself and his wife. His budget (see ex. D) reports net monthly income of \$6,774.42, for himself and \$1,000.00 for his wife, expenses of \$5,826.52 (inclusive of his child support), and a net remainder of \$1,947.90 (Ex. D). Applicant provides no proof of any financial counseling, debt consolidation initiatives or other settlement efforts.

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 accumulated several delinquent divorce-related debts that he has not been willing or able to successfully address before or since receiving the SOR. One of his two remaining debts involves a considerable sum (over \$36,000.00), and exposes Applicant to further collection action. His other debt is associated with a second home that he has so far been unable to dispose of at a price far below what he owes on the property and exposes Applicant to potential foreclosure. Without any document resolution of these debts, security concerns continue.

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 credit card and mortgage debts belonging to Applicant 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 credit card and mortgage debts are attributable in part to his inability and unwillingness to address a joint marital debt that his wife exploited following their divorce in 2004, and more recent default on a second home while trying unsuccessfully to enlist the mortgagee's approval of a short sale. His situation, if not resolved, places Applicant at considerable risk to suit and foreclosure that could endanger his existing assets and ability to successfully control his finances. His circumstances are not sufficient 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. Quite conceivably, Applicant could

have resolved his two major debts through counseling, use of debt restructuring with a debt consolidation firm, and restructuring of his mortgage (to include an arranged time extension for either repaying his mortgage and/or arranging an approved short sale). Afforded an opportunity to explore debt repayment arrangements with his two major creditors, he has not documented any progress in working out payment arrangements with these creditors. As a result, his efforts to date do not enable him to qualify for application of either MC ¶ 20©), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” or MC ¶ 20 (d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Neither of Applicant’s major debts (creditors 1.b and 1.d) are subject to any controlling statutes of limitation in Applicant’s present state, or state of his prior residence (see exs. 3 and 4; R.T., at 81). While his creditor 1.b debt is close to coverage of the time bar on written obligations in both states, the debt remains enforceable at the close of the evidence. Without any documented payment record or arrangement for satisfying or resolving either the credit card debt or the mortgage debt, Applicant is in no position to safely mitigate his debt delinquencies. Even though Applicant has been able to successfully dispute his other debt (creditor 1.a) and mitigate his two aged check fraud cases, the remaining two debts are simply too large to safely discount and mitigate.

For so long as Applicant is exposed to a large credit card debt and potential foreclosure on his currently defaulted mortgage, he remains at risk to levies on his bank accounts and foreclosure on his real estate, each with potential financial consequences. 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 certainly to be credited with outstanding military service and although the imposing trust attributes that are associated with this service. 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-paragraphs 1.b, .1.c, and 1.d of the SOR. Favorable conclusions are in order for the allegations covered by sub-paragraphs 1.a, 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:	FOR APPLICANT
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c	AGAINST APPLICANT
Sub-para. 1.d	AGAINST APPLICANT
Sub-para. 1.e	FOR APPLICANT
Sub-para. 1.f	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