



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-15743
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

June 23, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On November 15, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant's eligibility for access to classified information, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 17, 2007, and initially requested a determination on the written record. Based on his request of January 25, 2008 to have a hearing, his application was converted to a hearing proceeding. The case was assigned to me on March 5, 2008, and was scheduled for hearing on April 9, 2008. A hearing was held on April 9, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's application for a security clearance. At hearing, the Government's case

consisted of five exhibits; Applicant relied on one witness (herself) and one exhibit. The transcript (R.T.) was received on April 17, 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, Appellant requested leave to supplement the record with documentation of her payments of several of her listed debts and disputes of others. For good cause shown, Applicant was granted seven days, to April 19, 2008, to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with documented copies of her earnings statement and payment arrangements with several non-covered creditors. Several weeks later, she faxed two letters covering her intent to obtain updated credit reports that reflect deleted duplicated accounts. Department counsel did not object to any of these post-hearing submissions. Her post-hearing exhibits were admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated 19 debts exceeding \$17, 000.00. For her answer to the SOR, Applicant admitted some of the debts (11 in all) and denied the rest of her listed debts. She claimed she arranged payment plans with some of her creditors and pay-offs and duplications with other creditors. She pledged to take full charge of her debts and pay off the owed balances on her admitted debts and clear her credit within six to eight months.

Findings of Fact

Applicant is a 54-year-old production specialist for a defense contractor with whom she has over 30 years of experience. She seeks to retain her security clearance for certain programs. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant is married and has two grown children.; a daughter (age 34) and a son (age 29). She helps her son financially, who lives with her along with his two children (ages 14 and 11). Her son only recently emerged from incarceration and has no job (R.T., at 51). Her husband was stricken with spinal meningitis in 1996 and is on permanent medication (R.T., at 63). Because of his disability, he has not been able to help her much with her debts and expenses (R.T., at 47, 62-63). As a result, Applicant shoulders virtually all of her son's family expenses (R.T., at 51, 63). Just how much her husband is able to contribute to Applicant's household with his disability benefits is not developed.

Applicant began experiencing financial problems several years ago following her breast cancer diagnosis (R.T., at 55). Because of the physical burdens associated with

her cancer treatment, she had to stop working. She was initially out of work for about six months for medical reasons and returned to work in January 2003 (R.T., at 56). She missed another six weeks of work between February and March 2003, and assumed a part time schedule on her return for the remainder of the year (R.T., at 56-60). Applicant's medical bills for the surgical procedures she underwent and ensuing cancer treatment she received were considerable. While her insurance company covered 85 per cent of her bills, her cost-share was still considerable based on her income (R.T., at 60-61).

Pressed by her medical bills, the care of her grandchildren, and her limited work schedule while undergoing rigorous cancer treatment, Applicant fell behind with her debts. During this 2002-2003 time period Applicant accumulated 19 delinquent debts in all, exceeding \$17,000.00 in the aggregate. Several of the listed debts are either duplicates or debts attributable to others, and she disputes them (creditors 1.k, 1.m, 1.n and 1.r). Several others she claims to have paid (creditors 1.d, 1.q, and 1.s), but for the most part, she acknowledges the covered debts as her own and assures she is addressing them (R.T., at 28-46).

Applicant did explore financial counseling, but found it of little benefit to her given her household situation and decided not to pursue counseling (R.T., at 64). Applicant assures she has set up payment plans with several of her creditors (creditors 1.a, 1.g, 1.j, and 1.l), and she commits to working out settlement plans with the remainder of her acknowledged creditors. Afforded an opportunity to supplement the record with documented payments and payment plans, Applicant provided documentation that her two disputed debts with creditors 1.m and 1.n were being deleted from her credit reports with the principal credit reporting agencies (see ex. E).

Applicant's post-hearing documentation included an intended wage withholding to cover her student loan debt with a student aid commission (see ex. C). Whether this is the same debt covered by creditor 1.g in the SOR is unclear, but likely, based on the roughly comparable amounts covered in her credit reports and post-hearing submission. Applicant's supplemental documentation also included proof of settlements with two creditors that are listed in her credit reports but do not appear to be included in the SOR (see exs. 3, 4, D and E). She did not provide any documentation, though, of payments or payment plans with any of her other listed creditors in the SOR.

Currently, Applicant has bi-weekly income of \$1,277.38 (*compare* exs. 2 and B; R.T., at 67-69). She has started a janitorial business, which she expects to add to the two cleaning jobs she already has (R.T., at 71-72). Her current house-cleaning jobs net her about \$120.00 a month (see ex. 2; R.T., at 71). After deducting her estimated monthly expenses (around \$2,200.00, including her mortgage), she has a net monthly remainder of approximately (R.T., at 69). With her current income, she has been able to stay current with her other debts listed in her most recent credit report (see ex. 3; R.T., at 62). Applicant remains committed to paying her creditor 1.b debt, if she can successfully enlist the creditor to return her calls.

Not much is known about Applicant's work performance or trust and confidence in which she is held by her supervisors and coworkers. She did not provide any documentation of her performance evaluations, character references, or achievement certificates.

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." Adjudication Guidelines, ¶ 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 adversary 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 to 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 account of 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 production specialist who has held a security clearance with her employer for many years and seeks a new security clearance to qualify her with access to some of her employer's specific programs. Most of her listed delinquent accounts continue to remain unresolved. Absent documented discharge or payment initiatives with the listed creditors, these debts raise security significant concerns.

In Applicant's case, her still outstanding delinquent debts and her failure to document the debts she claims to have either paid or worked payment plans 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 medical and family issues associated with her disability in 2002-2003 and the care of her two grandchildren, who reside with her, along with her son. Her presented situation does demonstrate extenuating circumstances sufficient to warrant some 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 the duplicate debts covered by creditors 1.m and 1.n, none of Applicant's covered debts are documented to have been paid, disputed, or settled. Several of her debts, however, are quite old. Of this group of debts, seven appear to be covered by her state's statute of limitations: specifically, creditors 1. a through 1.c, 1.e, and 1.q through 1.s (see exs. 3 and 4). 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.a through 1.c, 1.e, and 1.q through 1.s all appear to be covered by the State's statute of limitations, and are treated, as such, herein as debts that are time-barred.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to absolve 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 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 some mitigation weight in evaluating Applicant's overall financial risk with respect to these specifically covered debts.

Based on Applicant's afforded reliance on her state's four-year statute of limitation to avert enforcement risk with respect to her 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.a through 1.c, 1.e, and 1.q through 1.s), 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 her proofs. Without any documentation of her payment efforts and disputes concerning most of these debts (save for creditors 1.m and 1.n), 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 her lack of any demonstrable steps to seek financial counseling.

Without more documented information to demonstrate she is addressing her listed debts and making use of financial counseling, she cannot safely mitigate all of the Government's financial concerns. Only Applicant's duplicated debts 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 for access to 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.

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 her remaining debts, it is difficult to draw convincing conclusions about her 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 her still outstanding debts. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.d, 1.f through 1.l, 1.o, and 1.p. of the SOR. By contrast, favorable conclusions warrant with respect to sub-paragraphs 1.a through 1.c, 1.e, 1.m and 1.n, and 1.q through 1.s 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:	FOR APPLICANT
Sub-para. 1.c:	FOR APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	FOR APPLICANT
Sub-para. 1.f:	AGAINST APPLICANT

Sub-para. 1.g:	AGAINST APPLICANT
Sub-para. 1.h	AGAINST APPLICANT
Sub-para. 1.i:	AGAINST APPLICANT
Sub-para. 1.j:	AGAINST APPLICANT
Sub-para. 1.k:	AGAINST APPLICANT
Sub-para. 1.l:	AGAINST APPLICANT
Sub-para. 1.m:	FOR APPLICANT
Sub-para. 1.n:	FOR APPLICANT
Sub-para. 1.o:	AGAINST APPLICANT
Sub-para. 1.p	AGAINST APPLICANT
Sub-para. 1.q:	FOR APPLICANT
Sub-para. 1.r:	FOR APPLICANT
Sub-para. 1.s	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