



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-16013
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

September 5, 2008

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On March 10, 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 April 2, 2008, and requested a hearing. The case was assigned to me on June 6, 2008 and was scheduled for hearing on July 14, 2008. A hearing was held on July 14, 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 four exhibits; Applicant relied on one witness (himself) and 11 exhibits. The transcript (R.T.)

was received on July 21, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of his payoff of his two of his listed debts in the SOR and his debt consolidation firm's acceptance of the payments in satisfaction of his debts with the creditors. For good cause shown, Applicant was granted seven days to supplement the record. Within the time permitted, Applicant supplemented the record with documented payments of his listed debts with creditors 1.c and 1.e and his debt consolidation firm's acceptance of his payments toward satisfaction of the covered debts. His post-hearing exhibits were admitted and considered.

Summary of Pleadings

Under Guideline F, Applicant accumulated five debts exceeding \$30,000.00. For his answer to the SOR, Applicant admitted three of the listed debts but denied the allegations covered by subparagraphs 1.a and 1.b on the grounds Applicant paid the debts to a collection agency in August 2007 and is unable to document the payments. He claims he is enrolled with a debt consolidation firm and is saving toward payment of these debts through his debt consolidation firm.

Findings of Fact

Applicant is a 52-year-old munitions lead for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is married with three children: two daughters (ages 19 and 22) and a son (age 16). His oldest daughter is a recent university graduate who funded her college education on a golf scholarship (R.T., at 62); while his youngest daughter is an enlistee in the Air Force, who is taking college credits (R.T., at 63). His son (age 16) lives at home and receives his financial support (R.T., at 40). Applicant served in the Air Force for almost 22 years before his retirement in January 1997 (see ex. 1; R.T., at 38-41). He has almost two years of college credit and is just one class away from receiving his AA degree.

Applicant maintained good credit while in the Air Force but had difficulty accumulating any savings for his retirement (R.T., at 52). Following his Air Force retirement, he and his wife bought a home (R.T., at 52-53). Having just started a new job in the private sector, he and his wife were confident of maintaining their mortgage payments and household obligations (R.T., at 52). Neither Applicant nor his wife anticipated major home repairs within the first few years of their purchase. But soon after they moved into the home, they encountered furnace problems and roof leaks that

required expensive repairs (estimated to be about \$18,000). These were expenditures that Applicant and his wife had not anticipated, but were necessary (R.T., at 52-54).

By 2006, Applicant's debts had increased significantly. Altogether, he accumulated five debts exceeding \$31,000.00. Four of the five debts involve two creditors (two credit card accounts with each of the identified two creditors). Unable to budget effectively to cover his accumulated debts, Applicant sought debt counseling with a recognized debt counseling firm (see ex. N; R.T., at 31-36). This firm permitted applicant to choose his own accounts for consolidation inclusion. With a \$5,000.00 advance from his oldest daughter (with no repayment obligations, but repayment expectancies, nonetheless), he completed a 36-month payment agreement with a debt consolidation firm in February 2006 (see ex. A; R.T., at 49-50). Under the terms of his repayment agreement with this firm, he paid \$5,600.00 (which included an \$1,800.00 up-front fee) to the firm in the first six months of his payment arrangement for ensuing apportionment to his listed creditors over a 21-month time frame (R.T., at 56-61).

Applicant documents payment of four of his five six listed debts (see exs. B through H, L and M; R.T., at 45-47). His payments to creditors 1.a and 1.b were actually satisfied in August 2007 and corroborated in January 2008 (see exs. B through G). After saving \$100.00 a month to accumulate funds to pay off his creditor 1.c debt (for \$4,655.00), Applicant was able to pay off this debt as well with saved funds paid over to his debt consolidation firm in July 2008 (see exs. H, L and M ; R.T., at 33). He is able to document keeping his promise to pay his creditor 1.e debt (for \$5,265.00) as well (see exs J, N and O; R.T., at 48-49). The only creditor that Applicant has not been able to satisfy in full is his creditor 1.d debt. Applicant was successful in setting up a payment plan with this creditor and documents payments on this account through his credit consolidation firm (see exs. I and O; R.T., at 33).

To ensure that he is able to stay atop his finances in the future, Applicant has set up a personal budget to allocate his current expenses and debts from his estimated net income resources. His estimated adjusted gross income is \$63,943.81 for the 2008 calendar year, which works out to about \$4,800.00 a month (ex. K; R.T., at 64). Against this calculated income stream, he estimates expenses and debt payment aggregates of \$63,058.56. This leaves him with a net remainder of \$885.25, which can vary up or down, depending on necessary adjustments to his income and expense/debt loads during the calendar year (R.T., at 65-79). Applicant assures that he will have satisfied his remaining SOR debt by March 2009, and credits his enrollment with his debt consolidation firm with his successful resolution of his debt problem.

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, ¶ 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 an experienced munitions leader with his defense contractor with an honorable discharge from the Air Force. He accumulated a number of credit card debts over a four-year period spanning 2002 and 2006 after starting a new job due to unanticipated roofing repairs on a newly purchased home and an ensuing downturn in the real estate economy. After briefly considering a bankruptcy alternative, he chose a debt consolidation firm to assist him in resolving his delinquent debts.

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, 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 inability to address most of these debts 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 unanticipated home repairs following his purchase of a home in 2006 just after starting a new job. All of his debts are consumer-related credit card accounts that incurred significant interest accumulations once he fell behind in his monthly payments.

Before receiving the SOR, Applicant initiated considerable efforts to resolve the debts through a debt consolidation firm. Specifically, he is able to document satisfaction of four of his listed debts and is well on his way to satisfying his fifth and final listed debt through his continued savings and the assistance of his debt consolidation firm.

Given Applicant's exhibited extenuating circumstances associated with his unanticipated need for home repairs just after joining his current defense contractor and ensuing downturn in the real estate market, and his exhibited considerable efforts paying his debts with his budgeted resources, Applicant may rely on 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. Extenuating circumstances continue to impact Applicant in her current efforts to resolve his accumulated debts.

Mitigation credit is also available to Applicant based on his exhibited substantial efforts paying his debts with his budgeted resources. Payment of his debts warrants application of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts.” Applicant has addressed all of his debts in a substantial way and provides documentation of payment in full of his four of his five listed debts and an earnest payment plan with the fifth and final creditor that he expects to complete in March 2009. Prospects for Applicant’s successful completion of his payment plan with this creditor are excellent based on his repayment record to date.

Applicant received considerable financial counseling from the debt consolidation firm he chose to work with in 2006. He is to be credited with earnestly looking for sources of financial advice with the resources available to him and taking productive advantage of the public advice he received from his debt consolidation firm in addressing his debts. He may take advantage 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.” Based on his initiated efforts to date, prospects for his gaining important insights in handling his finances in the future appear to be promising.

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).

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” in the management of an applicant’s finances, which certainly includes evidence of actual debt reduction through repayments. See ISCR Case No. 05-01920, at 5 (App. Bd. Mar. 1, 2007). An applicant’s good-faith debt repayment does not require, though, that he demonstrate repayment of each and every listed debt. All that is required is that the applicant demonstrate that he developed a plan to resolve his debts and taken significant actions to implement the plan. See ISCR Case No. 07-16013, at 2 (App. Bd. May 21, 2008); ISCR Case No. 04-09684, at 2 (App. Bd. July 6, 2006). Applicant meets these Appeal Board requirements in this case.

From a whole person standpoint, Applicant presents a history of honorable Air Force service and retirement and many years of demonstrated good judgment, reliability and trustworthiness while holding a security clearance. His children have profited considerably from his excellent parental example. His strong repayment initiatives reflect responsible and mature judgment and corrective measures that merit the Government’s renewed confidence in his judgment, reliability and trustworthiness.

Taking into account all of the facts and circumstances surrounding Applicant’s debt accumulations and his documented steps taken to resolve them, Applicant

mitigates security concerns related to his listed debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.e 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): FOR APPLICANT

Sub-paras. 1.a through 1.e: FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge