



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-17719
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

November 5, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On June 1, 2008, 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 eligibility for granting a security clearance, 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 July 8, 2008, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 21, 2008. Applicant did not submit any information in response to the FORM. The case was assigned to me on October 21, 2008.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated 29 delinquent debts exceeding \$215,000.00. These allegations are framed by subparagraphs 1.a through 1.c. For his answer to the SOR, Applicant admitted most of the allegations, admitted some of the underlying debts while denying any obligations to the listed collection agency, and denied two of the allegations.

Findings of Fact

Applicant is a 40-year-old employee for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant is not married and has no children. He lived with his grandmother for many years (see ex. A). Between 1993 and 2006 Applicant incurred considerable debts which became delinquent. Altogether, he accumulated 29 listed debts that exceed \$215,000.00. Applicant's credit reports corroborate the listed delinquent debts in the SOR (*compare* exs. 5 through 8).

In an OPM interview given in February 2007, Applicant did not dispute any of the listed debts listed in his credit report. He declined to provide any releases for his delinquent accounts, and failed to furnish any explanations for his heavy debt accumulations.

Applicant has a net monthly income of \$3,356.00. His net monthly household expenses total \$2,011.00. One of his creditors currently garnishes his wages for \$300.00 a month (see ex. 5). He has a net monthly remainder of \$1,045.00 (ex. 5).

Applicant traces his financial problems to 1997 when he began paying his grandmother's medical bills and supplementary living expenses (see ex. 5). She was very sick for a number of years and passed away in May 2006 (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. Adjudication 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 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 traces his financial problems to 1997 when he began assuming major responsibility for covering his grandmother's medical bills. Records indicate that he

accumulated over \$215,000.00 in listed debts (even more based on his own acknowledgments). Applicant has not provided any creditor releases or documented explanations of the reasons for his significant debt accumulations. Considering the size of his debt arrearage and the absence of any exhibited plausible explanations for the accumulations, these debts raise security significant concerns.

Applicant's finances

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, 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 mis-steps in judgment and questions about his reliability and trustworthiness are very much in evidence here based on the compiled administrative record.

Applicant's accumulation of delinquent debts and his inability to explain them and successfully address them 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(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 safely occupy a position of trust.

Applicant's accumulated debts are traceable in part to financial set backs associated with his grandmother's medical bills. Based on his very limited accounts of his financial difficulties, partial 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," is warranted here.

At this time, none of Applicant's covered debts are documented to have been paid, disputed, or settled. They exceed \$215,000.00 in the aggregate and represent a considerable debt load based on his current income sources. Applicant provides no explanations of the circumstances that gave rise to the debts in issue, and provides no evidence of any follow-through in addressing his outstanding debts.

Without more documented information to demonstrate Applicant is explaining and addressing his significant debt accumulation, he cannot mitigate the Government's financial concerns. Holding a security clearance involves the exercise of important fiducial responsibilities, which include 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 a principal

concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are important concerns as well.

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant's debt repayment efforts is insufficient to enable him to surmount security concerns independent of the express disqualifying conditions covered by AG ¶ 18. Without any exhibited repayment and work-out efforts to demonstrate progress in resolving his debts, it is not feasible to draw convincing conclusions about his overall trustworthiness based on factors not covered in the mitigating conditions of the guideline.

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). True, an applicant's good-faith debt repayment does not require 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 fails to meet Appeal Board requirements for repayment progress with his listed creditors. Absent some tangible form of payments and/or repayment plans on his listed debts, safe predictive judgments about his finances cannot be made at this time.

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 heavy debt accumulations. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.cc.

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-paras. 1.a through 1.cc:

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