



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-18245

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: Stuart Leeds, Esquire

December 1, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On May 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on May 22, 2010. The case was assigned to me on June 14, 2010, and was scheduled for hearing on July 22, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of 10 exhibits

(GE). All of the Government's exhibits were admitted. Applicant relied on one witness (himself) and no exhibits (AE). The transcript (Tr.) was received on July 29, 2010.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred one adverse judgment (subparagraph 1.a) in the amount of \$4,018 and (b) accumulated 15 delinquent debts exceeding \$61,000. In his response to the SOR, Applicant admitted one of the allegations (subparagraph 1.a) and denied the remaining ones. He provided no explanations.

Procedural issues

After the hearing, Applicant submitted a post-hearing settlement offer and documented repayment check with the judgment creditor covered by subparagraph 1.a. Department Counsel did not object to this post-hearing submission, and for good cause shown, the submission was admitted as AE A. Applicant later submitted documentation of his settlement of the debt covered by subparagraph 1.h and his involvement with a local charity in disaster preparedness. These exhibits, while filed out of time, were not objected to by Department Counsel and were admitted for good cause shown as AEs B and C.

Findings of Fact

Applicant is a 60-year-old simulations interactor for a defense contractor who seeks a security clearance. The only allegation covered in the SOR and admitted by Applicant is adopted as a relevant and material finding. Additional findings follow.

Applicant married W1 in December 1970. (GE. 1). Applicant divorced W1 in September 1978. (GE. 1). Shortly thereafter, Applicant married W2. He has two children (since emancipated) from this marriage. (Tr. 68) He divorced her in September 1987. (GE. 1) Applicant married W3 in 1989 and has no children from this marriage. (GE 1)

Applicant graduated from high school in May 1969. (GE 1; Tr. 66) He claims no completed college credits. (GE 1) In November 1970, he enlisted in the U.S. Army and served 20 years of active duty before his honorable discharge in December 1990. (GE. 1; Tr. 34, 66-67)

Between 1992 and 1999, Applicant worked as a data collection for a contractor responsible for missile systems development. (GE 1; Tr. 35-36) In this position, he held a security clearance. When his employer's contract ended in 1999, Applicant joined another contractor with missile defense development responsibilities (Tr. 37), and was ultimately laid off by this contractor in September 2000 after his employer lost its government contract. (GE 1; Tr. 71) He was out of work for approximately nine months before he secured a position as a truck driver. (GE 1; Tr. 71-72)

Between May 2000 and February 2003, Applicant worked for another defense contractor. When his company's contract expired, Applicant became unemployed again. He was unemployed for about 18 months before he secured a job with another defense contractor in 2004. (Tr. 72-73, 102) Applicant worked for several defense contractors between 2003 and 2006 (each requiring a security clearance). In each of his jobs, he made less money than he was accustomed to making, even after his unemployment benefits expired. (Tr. 41, 102). He experienced no identifiable financial setbacks between 2004 and the present that he could document. (GE 1; Tr. 38-42)

Applicant's finances

During his recurrent periods of unemployment, Applicant drew unemployment benefits (Tr. 37), and fell further behind in his debts. He had already stopped paying his debts following his 2001 layoff, and fell even further behind with his creditors after his 2003 layoff. (see GE 8; Tr. 73-74) Altogether, Applicant accumulated delinquencies with 16 of his creditors for more than \$61,000. One of these debts is a judgment that creditor 1.a obtained in May 2006 for \$4,018. Applicant claims no knowledge of the initiated suit against him prior to June 2006. (GE 8) His first notice of creditor 1.a's suit against him, and scheduled default hearing, came in a registered letter he received in 2006. (Tr. 76) Applicant did not respond to the notice or take any action to prevent the judgment from being entered against him. (Tr. 78)

Applicant consulted a bankruptcy lawyer in 2004 and was told that most of the debts were charged off, and the remaining ones would be charged off. (Tr. 74) Applicant relied on his lawyer's advice and initiated no repayment actions on his debts. (GE 6). Today, he claims a number of the listed debts (specifically, creditors 1.f, 1.i, and 1.l) in the SOR are duplicates of others in the SOR (*viz.*, creditors 1.c, 1.e, and 1.k), but provides no documentary proof. (Tr. 83-86) He also claims he tried to contact the listed creditors but found no creditor willing to work with repayment plans. (Tr. 80-83)

Of the remaining listed debts in the SOR, Applicant recognized only creditors 1.a, 1.e, 1.g, 1.h, and 1.n through 1.p. He was never able to complete any repayment arrangements with most of these creditors, and has made only limited payments and payment offers to any of these creditors since the accounts became delinquent.

Beginning in 2006, Applicant received letters from a number of his creditors seeking collection of the delinquent balances, including the judgment creditor covered by subparagraph 1.a. (GE 6) Still, Applicant refused to pay any of his listed creditors. He continues to treat most of these delinquent debts as charged off accounts and has made few concerted attempts to address these creditors prior to the hearing. (see GE 6 and AEs A and B; Tr. 101)

In October 2010, Applicant completed a payment arrangement with the judgment creditor covered by subparagraph 1.a. Under the terms of his payment arrangement, he was required to remit the sum of \$2,300 to the judgment creditor by September 24, 2010 to settle this judgment debt. Applicant documents his paying the required settlement sum in September 2010 in full satisfaction of the entered judgment. (see AE A) Applicant also

documented his settlement of his creditor 1.h debt to the satisfaction of the listed creditor. (AE B) His remaining debts covered in the SOR remain either unpaid, unresolved, or not credibly disputed.

Applicant currently nets around \$2,600 a month from his work and receives an additional \$1,300 a month from his service retirement. (see GE 8; Tr. 70-71, 91-92) His wife nets around \$500 a month in social security benefits. (Tr. 92)

Applicant owns a 2008 Dodge truck; while W3 owns a 2005 Cadillac. (Tr.93-94) He and W3 own a home and make monthly mortgage payments of \$720 on the home. Applicant has a net monthly remainder of about \$935 (GE 8), and he has \$14,000 in his 401(k) retirement account. (Tr. 100) He assures that he is current with his state and federal taxes. Without any available payment plans, he is not in a position to address any of his remaining delinquent debts. (Tr. 101)

Community service

In June 1998, Applicant participated in local disaster preparedness efforts in his community. His efforts were sponsored and recognized by a respected charitable organization. (see ex. C) He provided no endorsements from his employment, however, or performance evaluations.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (1) the nature, extent, and

seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

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. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, 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 commonsense 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. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). 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 by substantial evidence any controverted facts alleged in the SOR, 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 materiality showing, 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, the judge must consider and weigh the 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 evidentiary burden shifts to the applicant for the purpose of

establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a senior simulations interactor for a defense contractor who accumulated a number of delinquent debts (to include an adverse judgment) during recurrent periods of unemployment between 2001 and 2004. His accumulation of delinquent debts and his past inability and unwillingness to address these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and ¶ 19(c) “a history of not meeting financial obligations.”

Applicant’s debts are attributable in part to his inability to find well-paying work following his layoff in December 2001. After credits for the two debts he has since settled, his unpaid and unresolved delinquent debts still exceed \$50,000.

Based on the documented materials in the record, some extenuating circumstances are associated with Applicant’s inability to pay of or otherwise resolve most of his debts. Available to Applicant is MC ¶ 20(b), “the conditions that resulted in the behavior 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.”

Moreover, some judgment problems persist over Applicant’s unexplained continuing delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts once the underemployment conditions that contributed to the delinquencies had passed or eased, and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he has failed to address most of them in any tangible way.

To be sure, most of Applicant’s listed debts appear to have been placed in collection before 2002, and are likely barred by his state’s controlling statute of limitations. The only clear exception are the creditor 1.a judgment debt and 1.h consumer debt that he has since satisfied. None of Applicant’s remaining delinquent debts reflect any collection action by the individual creditors involved. Based on this record, most of Applicant’s covered debts appear to be barred from collection by the pertinent four-year statute of limitation in his state of domicile. See §§16.004(c) and 16.051 (statute of limitations for contracts) and (statute of limitations for debts) of T. Civ. Prac. & Rem. Code.

Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated with good-faith efforts to repay overdue creditors in security clearance

jurisprudence. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(citing ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Still, they provide effective collection barriers and, like bankruptcy, serve to insulate the debtor from pressures to raise cash to satisfy his or her creditors.

Mitigation credit is not available to Applicant based on the evidence developed in this record. Extenuating circumstances are not sufficiently shown by Applicant to justify relieving him of his payment responsibilities once he returned to full-time employment in 2004. While his state's statute of limitations may protect him from any collection enforcement by any of his outstanding creditors, it does not excuse his judgment lapses associated with his failure to make any documented efforts to pay or resolve his debts before or after they became time-barred.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts and failure to address them in a timely way once he returned to the active work force in 2004. Resolution of his delinquent accounts is a critical prerequisite to his maintaining control of his finances. Payment of two of his accounts following the hearing, while commendable, is not enough to credit him with restoring his finances to stable levels, commensurate with holding a security clearance.

While unemployment conditions played a considerable role in his accumulation of so many debts over a relatively short period, Applicant failed to provide sufficient explanations for his failure to address them after he returned to the active work force. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of his overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's recurrent periods of unemployment, his debt accumulations, and his failure to address them before the hearing, it is still too soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.b through 1.g and 1.i through 1.p. Subparagraphs 1.a and 1.h are mitigated.

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

Subparas. 1.b, through 1.g and 1.i through 1.p:	Against Applicant
Subparas. 1.a and 1.h:	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

