



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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)
-----) ISCR No. 08-01616
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

April 16, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On December 10, 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 December 10, 2008, and requested a hearing. The case was assigned to me on February 2, 2009, and was scheduled for hearing on February 25, 2009. A hearing was held as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of seven exhibits; Applicant relied on one witness

(himself) and one exhibit. The transcript (R.T.) was received March 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to supplement the record with an updated credit report and documentation of a consolidated student loan, payroll deductions for child support, and endorsements. For good cause shown, Applicant was granted seven days to March 4, 2009 to supplement the record. The Government was granted five days to respond. For good cause shown, Applicant was granted two additional continuances to March 26, 2009 to supplement the record. Within the time permitted, Applicant provided copies of an updated credit report, a cover letter from Applicant, an endorsement and pay statements. Department counsel did not object to the admission of the submissions. The submissions were admitted as exhibits B through E.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accumulated 21 delinquent debts exceeding \$30,000.00 (including six student loans totaling more than \$20,000.00) and to (b) had a personal judgment entered against him in the amount of \$359.00, which remains unsatisfied. For his answer to the SOR, Applicant admitted some of the allegations. He admitted the debts covered by subparagraphs 1.e, 1.g through 1.j, and 1.q. He denied the remaining 15 allegations without any explanations or affirmative defenses.

Findings of Fact

Applicant is a 35-year-old explosive transporter for a defense contractor who seeks a security clearance. 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 married his first spouse (W1) in October 1997 (see ex. 1). They divorced in June 2002 (ex. 1). He has one daughter (age 8) from this marriage. Applicant remarried in May 2004 (ex. 1; R.T., at 42). His current wife (W2) is enlisted in the Air Force (R.T., at 42). Applicant has one daughter (age 3) from his marriage to W2 (see ex. 1; R.T., at 72).

For a two-month period between April 2004 and June 2004, Applicant was unemployed (R.T., at 43-44), and encountered difficulties in paying his debts. He was unemployed again in 2006 (September 2006 through December 2006), and with the added responsibility for caring for an ailing parent who never recovered and expired in 2007 (R.T., at 44-46, 74, 79, 86). With these added burdens, Applicant fell further behind with his debts. His debts include a number of personal credit card debts

(creditors 1.e through 1.f and 1.q through 1.t), medical accounts (creditors 1.a through 1.d, 1.t and 1.u), child support arrearage owed to W1 for their daughter, student loans associated with trade school training (creditors 1.k through 1.p), and a judgment entered against Applicant in July 2003 associated with a car loan that remains unsatisfied (see exs. 2 and 6; R.T., at 85).

Applicant attributes most of his delinquent debts to unemployment problems in 2004 and 2006. He was able to document withholding from his weekly earnings (\$143.45) in accordance with a court order to cover his child support arrearage. This arrearage accumulated after Applicant relocated, became unemployed, and stopped making his ordered \$517.00 monthly child support payments to W1 (R.T., at 90-92). Applicant's furnished earning statements through March 2009 show aggregate payments to date of \$1,721.00 (see ex. E; R.T., at 76-77).

Applicant also documented his claimed consolidation of his four listed student loans into one loan with a new monthly payment of \$135.00 (see ex. A; R.T., at 51-62). His updated credit report corroborates Applicant's claims that he student loans are now consolidated and in current status (see ex. B).

Afforded an opportunity to address his other outstanding debts and entered judgment by creditor 1.v, though, Applicant failed to provide any evidence of his resolving or disputing any of his remaining debts in collection, charge-off, or judgment status. Still unresolved are the delinquent debts covered by creditors 1.a through 1.h and 1.q through 1.u, and creditor 1.v (the judgment creditor). That some of these named creditors no longer appear on Applicant's latest credit report is insufficient in and of itself to credit Applicant with resolution of the debts. Each of these debts (including the judgment debt) are reported in Appellant's September 2008 credit report (see ex. 6).

Appellant is appreciated by members of his community for the active role he has taken as a chaperone. By all accounts, he is a responsible parent.

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 facts 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 responsible employee of a defense contractor who accumulated a number of delinquent debts during periods of unemployment following his divorce from

his first wife. While some of his major debts are being satisfactorily addressed (e.g., his child support arrearage and student loans), others have not been resolved. Altogether, 17 of his listed creditors (inclusive of his judgment creditor) remain unaddressed and unresolved. Only his child support arrearage and student loans have been actively worked on. And the payment history on these accounts is relatively recent and modest in overall repayment credits to date.

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's accumulation of delinquent debts and his past inability to pay 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 divorce from W1 and periods in 2004 and 2006 when he was out of work. Faced with so many pressing challenges to manage a new family, pay child support arrearage owed to W1, honor his student loans, and still manage the responsibilities he faces with his new spouse and young daughter, Applicant has plainly struggled to keep up. His progress to date in regaining control of his finances is improved, but far from complete. His finances remain a work in progress that require a good deal of effort on Applicant's part to fully stabilize them.

Based on his evidentiary showing, extenuating circumstances are associated with Applicant's inability to take care of his past debts. Available to Applicant is MC ¶ 20(b) of the financial considerations guideline, "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." Albeit, some judgment problems persist over the amounts he accumulated in back child support arrearage, student loans, his medical accounts, and his consumer-related debts without any tangible efforts to resolve once he returned to a regular work schedule.

Mitigation credit is only partially available to Applicant based on his limited demonstration of good faith repayment efforts. The age of each of the covered debts is covered by two of the mitigating conditions for financial considerations. 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 partial applicability, but is in no way dispositive under the facts presented. MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has some limited application, too, under all of the circumstances covered.

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).

Whole person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. Since his divorce and return to work following his last lay-off in 2006, he has not shown enough tangible effort in addressing all of his covered debts to mitigate his still delinquent debts and credit him with restored control over his finances. While Applicant provided some documentation of exhibited good judgment and trust in his community and work, he provided no endorsements from his supervisors, and no performance evaluations or other evidence of his company contributions to demonstrate his trust and reliability with his employer. In balance, whole person assessment does not enable Applicant to establish judgment and trust levels sufficient to enable him to overcome appraised security concerns arising out his accumulation of delinquent debts.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to address them with, the limited steps he has mounted to address his old debts, it is still soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with his holding a security clearance.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.h, 1.j, and 1.q through 1.v. Based on Applicant's proofs, favorable conclusions warrant with respect to subparagraphs 1.i and 1.l through 1.p.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2(a) 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.h:	Against Applicant
Sub-para. 1.i:	For Applicant
Sub-para. 1.j :	Against Applicant
Sub-paras. 1.l through 1.p:	For Applicant
Sub-paras. 1.r through 1.v:	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