



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



In the matter of:)
)
-----) ISCR Case No. 08-09564
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

August 5, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On February 11, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as issued and modified, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant eligibility for 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 March 9, 2009, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on April 24, 2009, and did not supplement the record. The case was assigned to me on June 18, 2009. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accumulated eight delinquent consumer debts exceeding \$18,000; (b) had an adverse judgment entered against him in September 2005, in the amount of \$2,005; (c) had tax liens (one federal lien and two state lines) filed against him totaling in excess of \$19,000; and (d) listed expenses in excess of income on a personal financial statement (DSS Form 154) he completed in December 2008.

Under Guideline E, Applicant is alleged to have falsified the security clearance application (e-QIP) he completed in February 2008 by omitting the following: the tax liens placed against his property within the past seven years, an unsatisfied judgment entered against him, debts delinquent over 180 days in the past seven years, and debts currently 90 days delinquent.

For his response to the SOR, Applicant admitted each of the allegations. He explained that he answered in the negative to the e-QIP he completed thinking of the payments he was behind in, and not realizing at the time that he needed to calculate what was owed (see item 3).

Findings of Fact

Applicant is a 54-year-old driver 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 married in March 1984 and divorced in June 1996 (see item 4). He has three adult children from this marriage (item 4). He has also one adult stepchild from this marriage (item 4).

Applicant's finances

Between 1995 and 2008, Applicant accumulated a number of delinquent debts (see item 5). Three of the largest debts involve federal and state tax liens. Records show that a federal tax lien in the amount of \$16,614 (creditor 1.e) was entered against Applicant in June 2003 (item 5). Records also show that two state tax liens were entered against Applicant: one in March 1995 for \$1,787 and another in June 1998 for \$1,099. According to Applicant's latest credit report, none of these tax liens have been released (item 5).

Besides the tax liens, records document that a judgment was entered against Applicant by creditor 1.d in September 2005 for \$2,005. Applicant rented an apartment from creditor 1.d in 2003 (see item 7). When Applicant was late in his rent in November 2006, this creditor filed a complaint to recover two months of back rent, interest and penalties (item 7). Creditor 1.d obtained a judgment against Applicant. Applicant claims

he made arrangements to make monthly payments to this judgment creditor, at the rate of \$100 a month, and has since reduced the amount owing on the judgment to approximately \$1,200 (item. 7). He does not provide any documentation of his payments, however, and still owes in excess of \$2,000 according to his latest credit report (item 5).

During his 28 years of military service, between 1972 and July 2000, Applicant created a number of consumer-related delinquent debts. Applicant's credit report lists eight consumer-related debts exceeding \$18,000 (see item 5). Applicant claims some of the debts represent duplicates but provides no evidence of disputing any of these debts with either the credit reporting agencies or the disputed creditors themselves.

By and large, Applicant attributes his debt delinquencies to child support issues. Rising child support obligations have limited his ability to pay his other debts (see item 7). Approximately \$225 has been garnished from his wages bi-weekly, and his arrearage currently exceeds \$50,000. As interest continues to accrue on his child support arrearage, Applicant can provide no estimate of when he will be able to eliminate the arrearage (item 7).

Applicant attributes his financial problems to insufficient trucking assignments and heavy child support obligations (see item 7). Applicant does not provide any more specific explanations of his accrued tax liens, the adverse judgment against him, or the other delinquent consumer debts listed in his latest credit report. He does not indicate whether he has received financial counseling or considered debt consolidation. Claiming he is on a payment plan with the IRS to resolve his tax lien, he does not provide any documentation of his payment efforts or any corrective steps he has taken to resolve any of his other tax liens, the judgment, and the delinquent consumer debts.

Applicant completed a personal financial statement in December 2008. In his statement, he listed net monthly income of \$2,631.14, monthly expenses of \$2,978.95, and debts that exceeded \$16,000 (excluding his tax liens and judgment). He listed no assets in his statement and a VA disability of \$116 a month (see item 7).

Applicant's e-QIP omissions

Asked to complete an e-QIP in February 2008, Applicant omitted (a) his federal and state tax liens, (b) the judgment entered against him in September 2005, and (c) his admitted debts over 180 days delinquent and currently 90 days delinquent. Applicant did not provide any explanations for his omissions.

The questions covering Applicant's omissions are fairly straight forward. Without any credible explanations of why he omitted the listed liens, judgment, and delinquent debts, adverse inferences are warranted that he omitted them deliberately and not as the result of any good-faith mistake or misunderstanding.

Several months later (in June 2008), Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). Close review of the summary of interview by the interviewing agent confirms that the interview was scheduled to discuss Applicant's finances. The summary details the agent's discussion of Applicant's listed debts in his credit report and the circumstances under which they arose. While it is not clear whether the agent confronted Applicant with his credit report or other indicators of accrued debts, there is nothing in the report to indicate that Applicant volunteered the information about his liens, judgment, and delinquent debts without the benefit of prompting questions.

Endorsements

Applicant did not provide any endorsements or other evidence of his contributions to his employer and community. Potentially helpful to Applicant in evaluating his overall contributions and trustworthiness would be his performance evaluations, achievement awards, training certificates, and meritorious citations. None were provided in Applicant's SOR response, and he did not choose to provide any in response to the FORM.

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 "[c]onditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all "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. Adjudicative Guidelines (AG), ¶ 18.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

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 on 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 evidentiary burden 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. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-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 driver for a defense contractor who accrued several tax liens (federal and state), a landlord's judgment, and a number of delinquent debts over a 15-year period. These obligations remain outstanding and are security significant. Applicant's e-QIP omissions of his tax liens, outstanding judgment, and all of his debts over 180 days delinquent in the past seven years and currently 90 days delinquent, raise security concerns, too, about his judgment, reliability, and trustworthiness.

Applicant's financial issues

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 can 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 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 DC ¶ 19(c) "a history of not meeting financial obligations."

Applicant attributed most of his financial problems to the lack of trucking assignments and his heavy child support arrearage. He provided few documented specifics of the circumstances surrounding his accrued tax liens, landlord's judgment, and consumer debts listed in the SOR and covered in his OPM interview. Without more information about the circumstances surrounding his debts and his past efforts in addressing them, Applicant cannot be credited with any notable progress to date in regaining control of his finances. Further, he provides no hard assurances of any commitment to resolve his debts in the foreseeable future.

Considering Applicant's lack of any documented explanations of his tax liens, his outstanding judgment, and his failure to identify any responsive corrective steps to address his debts, he may not take advantage of 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." Application of MC ¶ 20(b) requires an applicant to document not only probative evidence of extenuating circumstances associated with his delinquent debt accruals, but also his demonstrated responsible efforts in addressing his debts, both during and after the precipitating events have subsided. Applicant has provided no qualifying documentation to warrant the application of MC ¶ 20(b). Application of any part of MC ¶ 20(b) is unjustified herein.

Mitigation credit is not available to Applicant either under any of the other mitigating conditions, because he has not provided any documented evidence of restorative steps he has taken to date. Afforded an opportunity to supplement the FORM with documented contacts, payments, and work-out arrangements with some or all of his listed creditors, Applicant declined to do so.

Holding a security clearance involves the exercise of important fiducial responsibilities, including 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.

Whole person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of still unresolved delinquent tax liens, judgment, and other debts. To date, Applicant has not shown any tangible efforts to resolve his outstanding debts to overcome security concerns about the state of his finances.

Considering the record as a whole, it is still too soon to make safe predictive judgments about Applicant's ability to resolve his tax liens, outstanding judgment, and old consumer 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.o.

Applicant's omission issues

Security concerns over Appellant's judgment, reliability and trustworthiness are raised under Guideline E as the result of his deliberate omission of his tax liens, outstanding judgment, and delinquent debts over 180 days delinquent in the past seven years and debts currently 90 days delinquent, respectively. By his determined intentional omission of his liens, judgment and delinquent debts, Applicant failed to furnish materially important background information about his finances that was needed for the Government to properly process and evaluate his security clearance application.

Applicant's omissions are not accompanied by any explanations of the circumstances surrounding completion of his e-QIP. Standing alone, without any credible explanations, the omissions manifestly reflect his conscious decisions to omit material information concerning his tax liens, the outstanding judgment, and his delinquent debts. Based on the inferences drawn of Applicant's intentional omissions of his tax liens, outstanding judgment, and debts over 180 days in the past seven years and 90 days currently delinquent, respectively, the alleged omissions in the SOR are proven and concluded as stated.

To his credit, Applicant voluntarily disclosed his liens, judgment and all of his debts when asked about them in a subsequent official OPM interview. The summary interview provided by OPM documents that Applicant was contacted by an OPM agent two months after completing his e-QIP. Applicant's answers reflect some degree of prompting or confronting by the interviewing OPM agent.

Applicant's explanations of his debts, which followed specific questions asked of him by the OPM investigator, cannot, as such, be considered voluntary. While Applicant's answers were sufficiently prompt to satisfy the prompt prong of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," they did not meet the good-faith requirement. of MC ¶ 17(a).

In evaluating all of the circumstances surrounding Applicant's e-QIP omissions and his ensuing partial corrections, his disclosures are insufficient to enable him to convincingly mitigate the deliberate falsification allegations. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations are core security concerns of the personal conduct guideline (AG ¶15). They are clearly evident under the facts and policy considerations developed under this Guideline. Overall, Applicant's omission corrections are insufficient enough to warrant conclusions that his e-QIP omissions of his delinquent debts are mitigated by prompt, voluntary corrections.

Taking into account all of the evidence produced in this record, unfavorable conclusions warrant with respect to the Guideline E allegations that Applicant knowingly and wilfully omitted his tax liens, the outstanding judgment against him, and his debts more than 180 days delinquent in the past seven years and currently 90 days delinquent, respectively, in the e-QIP he completed.

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.o: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-paras. 2.a through 2.c: 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 a security clearance for Applicant. Clearance is denied.

Roger C. Wesley
Administrative Judge