



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



In the matter of:)	
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)	
-----)	ISCR No. 08-03233
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Mel Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On October 28, 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 November 26, 2008, and requested a hearing. The case was assigned to me on February 2, 2009, and was scheduled for hearing on January 28, 2009. The case was called a the convened hearing on the scheduled date and continued. The case was then rescheduled for February 25, 2009. A hearing was held as rescheduled, 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 eight exhibits; Applicant relied on two witnesses (including himself) and 11 exhibits (AEs A-G). 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

At the outset of the hearing, I denied Applicant's motion for a change of venue to the city of his residence (within 100 miles of the site of this hearing). Applicant then amended his response to answer subparagraph 2.a of the SOR, which he had previously failed to answer. He admitted to omitting his federal tax lien in responding to question 27 of his Questionnaire for National Security Positions (e-QIP), but not intentionally. His answer was treated as a denial.

Prior to the close of the hearing, Department Counsel moved to strike subparagraphs 1.xx through 1.fff as duplicate accounts. There being no objection from Applicant and good cause being demonstrated, Department counsel's motion to strike was granted (R.T., at 140-141).

Before the close of the hearing, Applicant requested leave to supplement the record with documented payments of two of his medical debts. For good cause shown, Applicant was granted 14 days to supplement the record with documented awards, character references and payments. The Government was afforded two days to respond. Within the time permitted, Applicant provided copies of a personal financial statement, payment letters, military awards, and a payment offer from one of the listed creditors. Department counsel did not object to the admission of the submissions. The submissions were admitted as exhibits H through N.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accumulated 61 delinquent debts exceeding \$50,000.00, (b) had a judgment entered against him in January 1995 for \$819.00, and (c) been subjected to a federal tax lien.

Under Guideline E, Applicant is alleged to have falsified his e-QIP by omitting the federal tax lien filed against him in February 2004 in the amount of \$11,765.00.

For his answer to the SOR, Applicant admitted some of the allegations. He admitted some of the debts but denied others. He claimed he is a military veteran and is not a dishonest person.

Findings of Fact

Applicant is a 58-year-old logistics manager 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 is a retired non-commissioned officer with over eight years of service in the Marine Corps and 16 years of service in the Army. His service included tours in Vietnam, for which he was awarded several decorations, including a Purple Heart (R.T., at 73). Following his discharge from the Marines in 1975, he tried several civilian jobs before enlisting in the Army. Once enlisted in the Army, he was quickly promoted to the rank of E-7 (R.T., at 73-74), and he served in the Desert Storm campaign.

After completing his Desert Storm tour, Applicant faced the demise of his father-in-law, and retired (R.T., at 80). Once retired, he encountered age bias in his search for civilian work. So, he enrolled in community college and pursued his associates arts degree (R.T., at 82).

Between 1991 and 1998, Applicant was employed sporadically. Financial pressures in his home weakened his marriage, and prompted his separation in 2004 (see ex. 11). During these difficult times, Applicant also endured various physical problems associated with his gender identity. Convinced he was a girl, he changed his gender from male to female (R.T., at 83-84). Once he made the gender change, his wife of 30 years told him that she could not live with him anymore. Thereupon, they separated and divorced. Applicant has since married another woman (R.T., at 169).

While working temporary jobs, Applicant was informed by the IRS he owed the Service over \$11,000.00 (R.T., at 85-86). In an effort to settle the claim, he inquired of the IRS about a compromise. When the IRS indicated it wanted \$350 to \$400 a month from him to settle the IRS tax claim, Applicant declined (R.T., at 87).

In 1998, Applicant found a warehouse job in another state (R.T., at 87-88). He accepted the job and spent the ensuing 16 months on this job before he was told the company was going out of business and would have no further need for his services (R.T., at 88).

Between 1998 and 2002, Applicant worked odd jobs as a night watch manager and warehouse operator (R.T., at 89-90). He had several jobs with different companies before accepting a defense job in 2005 (R.T., at 93). He lost this job in 2006 when the employer's contract was canceled. He was hired by his current employer in April 2007, and has maintained continuous employment with this employer (R.T., at 99-100).

Applicant receives retirement pay from his military service. However, his ex-wife receives half of his \$753.00 monthly retirement check pursuant to their final divorce decree.

Applicant accumulated a number of delinquent debts between 1998 and 2005. Some of the listed debts in the SOR are duplications. The remaining debts exceed \$45,000.00. Several of them are quite large. For instance, the creditor 1.aa debt lists a

\$20,000.00 delinquent obligation to this creditor. Applicant has an agreement with a debt consolidation company (ex. E), which Applicant has tasked to work with some of his major creditors (R.T., at 112-113). To date, though, this company has not been able to produce any documented payment plans with any of his creditors (inclusive of creditor 1.r through creditor 1.v and creditor 1.aa).

Another major listed obligation is a February 2004 tax lien filed by the IRS (creditor 1.z). This lien covers a \$11,765.86 tax debt owed by Applicant and his ex-wife. Under his settlement agreement with his ex-wife, Applicant assumed the tax obligation on behalf of both spouses (R.T., at 162-163). Applicant has engaged an attorney to pursue an offer in compromise with the IRS (see ex. A). To date, he has not heard anything back from the IRS on his compromise offer.

Applicant has continued to work on paying off his smaller debts. He documents payment of debts owed to creditor 1.v, creditor 1.x, creditor 1.y/1.mm (same company, R.T., at 113-118, 125-126), creditor 1.oo, creditor 1.rr, creditor 1.tt and creditor 1.hhh. He has payment agreements with creditor 1.a (ex. I), creditor 1.pp, and creditor 1.jjj, and assures he will be making payments to these creditors (R.T., at 143). Once he pays these debts off, they will be removed from his credit report, and he can then focus paying on his larger debts.

Among Applicant's document submissions is a compromise offer from the collection agency for creditor 1.aa., in which the creditor indicates it will accept \$8,737.12 in full settlement of the creditor's claimed debt of \$21,842.79 (see ex. M). Applicant provides no documented acceptance of the offer, however, and it remains unclear how he plans to address the debt owed to creditor 1.aa. Applicant did not have any answers either at hearing as to how he would be addressing creditors 1.bb through 1.ll (R.T., at 152).

Applicant has monthly gross income of \$6,647.00. His expense and debt payments total \$4,341.00, which leaves him with a net monthly remainder of \$2,306.00 (see ex. H).

Asked to complete his e-Qip in July 2007, Applicant failed to disclose his federal tax lien when responding to question 27. To be sure, there are no clear explanations in the record as to why Applicant omitted his tax lien. Clearly, he was aware of back federal taxes owed, having assumed the tax obligations as a part of his divorce settlement.

When asked about debts over 180 days delinquent in question 28 of the same e-QIP, Applicant candidly acknowledged having such delinquent debts (see ex. 1). Applicant's affirmative answer to delinquent debts when responding to question 28 manifestly shows he was not disposed to concealing his delinquent debts (inclusive of his tax debts), and is sufficient to warrant inferences he did not deliberately attempt to conceal his tax obligations from the Government.

Applicant earned a number of awards and commendations during his military service enlistment (ex. L). His credits include professional training and achievement certificates (see ex. F). He is well regarded by a community little league for whom he provides voluntary umpire services (see ex. G; R.T., at 103-04). Applicant has been umpiring for over 35 years at the little league and high school levels, for which he receives modest compensation (R.T., at 105-107, 157).

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.

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 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 and underemployment. While he is able to document payment of a number of small debts and payment arrangements with several other creditors, he has not been able to make any major headway with most of his creditors, including all of his listed major debts.

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 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 to recurrent periods of unemployment and under employment between 1998 and 2006. Faced with so many pressing challenges in finding sustainable work, and still manage the responsibilities he faces in his new relationship, Applicant has struggled with his mounting debts. His progress to date in regaining control of his finances is promising, but still a considerable work in progress that is only recently being addressed. He still is working on taking care of his small debts and can provide no estimates as to when he will be able to address his major debts (to include his federal tax lien, his outstanding judgment, and his creditor 1.aa debt).

Based on his evidentiary showing, Applicant’s proofs are sufficient to establish some extenuating circumstances associated with his debt accumulations. As a result, 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,” has some application to Applicant’s circumstances.

Full mitigation credit is not available to Applicant based on the facts of this case. Neither Applicant’s oral or written evidence reflect any initiated voluntary repayment efforts in his behalf on his major debts. His documented payments and payment agreements with individual creditors and debt consolidation firm are encouraging, but not enough at this time to warrant full application of any of the mitigating conditions covered in the financial guideline.

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. His military service merits considerable praise and commendation. His many certificates of training and achievement in his civilian career reflect positively on Applicant’s career commitments and professional growth. Still, he has not shown enough tangible effort in addressing his covered debts to mitigate his still delinquent debts and credit him with restored control over his finances. 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 too 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 1b through 1.u, 1.w, 1.z, 1.aa through 1.ll, 1.nn,1.qq, 1.ss, 1.uu through 1.ww, 1.ggg, 1.iii and 1.kkk. Favorable conclusions warrant with respect to subparagraphs 1.a, 1.v, 1.x, 1.y (duplicated in 1.mm), 1.oo, 1.pp,1.rr, 1.tt, 1.hhh, and 1.jjj.

Applicant's e-QIP omission

Posing potential security concerns, too, are Applicant's documented omitted tax lien in the e-QIP he completed in June 2007. He denied any intent to falsify in his amended answer and affirmatively admitted his having debts over 180 days delinquent when responding to question 28 of his e-QIP. His disclosure of his delinquent debts in the ensuing question 28 is sufficient to avert any inferences of knowing and wilful attempts to hide his financial problems.

From a whole person perspective, Applicant presents as an essentially honest applicant who experienced numerous periods of unemployment and underemployment and ensuing financial problems. None of his accumulated debts, though, reflect any acts of dishonesty. Both his military service and work in his community with little league attest to his overall honesty.

Based on Applicant's admission of his delinquent debts (tax debt included) and overall showing of honesty, Applicant is able to successfully refute the allegations of deliberate falsification in the SOR. Favorable conclusions warrant with respect to the allegations covered by subparagraph 2.a of Guideline E.

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.	1b through 1.u, 1.w, 1.z, 1.aa through 1.ll, 1.nn,1.qq, 1.ss, 1.uu through 1.ww, 1.ggg, 1.iii and 1.kkk:	Against Applicant
Sub-paras.	1.a, 1.v, 1.x, 1.y, 1.mm, 1.oo, 1.pp, 1.rr, 1.tt, 1.hhh, and 1.jjj.	For Applicant

GUIDELINE E (PERSONAL CONDUCT):

FOR APPLICANT

Sub-para. 2.a:

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