



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 08-05227  
SSN: ----- )  
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Applicant for Security Clearance )

**Appearances**

For Government: Paul M. Delaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

November 5, 2009

**Decision**

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WESLEY, Roger C., Administrative Judge:

**History of Case**

On November 19, 2008, 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 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 revised Adjudicative Guidelines (AGs) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on April 16, 2009, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on June 2, 2009, and did not respond with any information within the 30 days permitted. The case was assigned to me on September 3, 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 accumulated 11 delinquent debts, exceeding \$66,000 as follows: creditor 1.a (\$20,954); creditor 1.b (\$18,841); creditor 1.c (\$59); creditor 1.d (\$73); creditor 1.e (\$2,933); creditor 1.f (\$380); creditor 1.g (\$133); creditor 1.h (\$187); creditor 1.i (\$289); creditor 1.j (\$578); and creditor 1.k (\$22,525). One of the debts (creditor 1.a) represents an adverse judgment entered against Applicant. Another (creditor 1.k) represents the deficiency balance on a repossessed vehicle.

In his response to the SOR, Applicant admitted some of the debts, but denied others. He claimed some of the debts that he admitted generally contained the wrong amounts (*i.e.*, creditors 1.a and 1.b). He claimed the medical debts identified in SOR paragraphs 1.c, 1.d, and 1.f through 1.h represent medical bills that should rightfully have been paid by his medical insurance. And he claimed the debt alleged in SOR 1.k was a duplication of the debt alleged in SOR 1.a. He provided no explanations of the circumstances surrounding his admitted debts, or what steps he had taken to resolve them.

## Findings of Fact

Applicant is a 52-year-old entry-level technician 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 has been married to his spouse since August 1978 (see ex. 1).<sup>1</sup> He has no children from this marriage. He retired from the U.S. Army in September 2005 after 13 years of active duty and an additional 11 years of reserve duty (see exs. 1, 7 and 10). His service discharge certificate documents his entry on active duty in 1977 and his retirement date in December 2005 (see exs. 6, 7 and 10).

Applicant accumulated a number of delinquent debts between 2004 and 2008. His listed delinquencies are documented in both of his credit reports and exceed \$66,000 in aggregate indebtedness (see exs. 8 and 9). One of these debts represents an outstanding judgment that was taken against him in November 2007 by creditor 1.a for \$16,209 (see exs. 8 and 9). This judgment is associated with a voluntary vehicle repossession in Spring 2004 (ex. 10). When Applicant could not pay the assessed deficiency, the creditor sued to recover its entitled deficiency and obtained its judgment. The creditor 1.a and creditor 1.k debts reflect duplicate accounts (see exs. 6 and 8 through 10).

Applicant attributes most of his admitted debts to recurrent conditions of underemployment between 2005 and 2007. His security clearance application reports periods of underemployment between September 2005 and November 2007 (see exs. 1 and 10). His submissions provide no details of his earnings and expenses during

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<sup>1</sup> Relevant and material information identified as "Items" in the FORM are referenced as exhibits to ensure consistency with the way documentary materials are identified in hearing proceedings.

these reported years. Without more financial information from Applicant about himself and his spouse during the pertinent period of reported debt delinquencies, his monetary circumstances cannot be properly evaluated.

Several of the listed debts in the SOR are disputed by Applicant. He denies financial responsibility for the medical debts alleged in subparagraphs 1.c, 1.d, and 1.f through 1.h of the SOR. He claims these debts should have been paid by TRICARE (ex. 6). Applicant provided no documentation, though, to support his claims. He indicated in his personal subject interview with an investigator from the Office of Personnel Management (OPM) in February 2008 that he had no information concerning these medical accounts (ex. 7). Whether these listed medical bills should have been covered by TRICARE cannot be determined without more input and documentation from Applicant.

Applicant could provide no financial information either about most of his non-medical debts in his personal interview with the OPM investigator. Although he was afforded an opportunity to supplement the record, Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions. His service records confirm that he received numerous meritorious and commendation awards during his military service (see ex. 6). His certificate of retirement documents his completion of various leadership and instructor courses and numerous service performance awards (ex. 6).

### **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 an entry-level technician of a defense contractor who accumulated a number of delinquent debts (to include an adverse judgment) during recurrent periods of underemployment. 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 pleading admissions of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s listed debts are fully documented in his latest credit reports and provide ample corroboration of his debts.

Applicant’s debts are attributable in part to his inability to find well-paying work following his retirement from the U.S. Army in 2005. His largest debt is a deficiency resulting from a car repossession. It was reduced to a judgment in 2007 and remains outstanding. While one of the listed debts (creditor 1.k) is a proven duplication of the debt covered by subparagraph 1.a of the SOR, all of the remaining debts covered in the SOR are either unpaid or unresolved.

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant’s inability to pay of or otherwise resolve 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, too, over Applicant’s unexplained 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 them in any tangible way. Mitigation credit is not available to Applicant based on the evidence developed in this record.

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).

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 also explicit in financial cases. 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. Since his discharge from the Army in 2005, he has not shown any manifest effort in addressing any of his covered debts to mitigate his still delinquent accounts. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

While underemployment conditions might have played a considerable role in his accumulation of so many debts over a relatively short period, Applicant failed to provide any explanatory material for consideration. 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 based on the limited amount of information available for consideration in this record 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 debt accumulations, his lack of any exhibited explanations for his debt accruals, and his failure to provide any proof of corrective actions taken 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 the minimum requirements for holding a security clearance.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.j. Subparagraph 1.k is mitigated.

In reaching my decision, I have considered the evidence as a whole, including each of the 2(a) factors enumerated in the AGs.

### **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.a through 1.j:

Against Applicant

Subpara. 1.k:

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.

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Roger C. Wesley  
Administrative Judge

