



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-06296
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On August 13, 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 (undated) to the SOR in September, 2008, and requested a hearing. The case was assigned to me on September 23, 2008, and was scheduled for hearing on November 13, 2008. A hearing was held on November 13, 2008, 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 five exhibits; Applicant relied on one witness

(himself) and three exhibits. The transcript (R.T.) was received on November 21, 2008. 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 documentation of a petition for Chapter 7 bankruptcy. For good cause shown, Applicant was granted 30 days to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant requested an additional 30 days to file his bankruptcy petition, citing his recent retainer of bankruptcy counsel who requires up front fees of \$2,000.00 and a few additional documents from Applicant before he will undertake preparation of the filing. Department counsel did not object to the extension request. And for good cause shown, Applicant was granted an additional 30 days (to January 12, 2008) to document the filing of his Chapter 7 bankruptcy petition. Within the time permitted, Applicant supplemented the record with a Chapter 7 bankruptcy petition. The submission was admitted as exhibit D.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accumulated five debts exceeding \$320,000.00 and (b) petitioned for Chapter 7 bankruptcy relief in February 2000 (discharged in May 2000). For his answer to the SOR, Applicant admitted all of the of the allegations. He claimed that his home is no longer in foreclosure, and that he is currently working with the lender on a remodification loan.

Findings of Fact

Applicant is a 39-year-old security officer 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 current spouse in September 1993 (see ex. 1, R.T., at 70). He has three children from his marriage (R.T., at 71). In 1998 he was injured on the job and suffered knee and shoulder injuries (R.T., at 69, 83-84). He was awarded workman's compensation benefits which sustained him for a year (R.T., at 85-87). Because his workman's compensation benefits were less than his work income, he used his credit cards to cover his monthly expenses (R.T., at 85-87). With his income significantly reduced, Applicant struggled to pay his bills, even with some financial assistance from his union.

Unemployed and unable to cover his credit card debts, Applicant petitioned for Chapter 7 bankruptcy in February 2000. He scheduled \$20,000.00 in debt and virtually no assets. He received his discharge in May 2000, in what was essentially a no-asset case.

Applicant returned in work in 2000, and for awhile was able to keep up with his accounts. He purchased a home in 2001 for about \$225,000.00 (R.T., at 94-95). He made a down payment of \$7,000.00 and obtained a fixed mortgage on the home for \$225,000.00 (R.T., at 95). Under the terms of his mortgage, he was obligated to make \$1,800.00 a monthly payments. In 2002, he refinanced his home in the strength of a variable rate mortgage that was lower than his original fixed rate and netted him \$20,000.00 in personal proceeds from his refinance (R.T., at 96).

During a layoff from his principal employer, Applicant worked in manufacturing jobs. He worked in these jobs off and on between January 2002 and October 2004 (see ex. 1). He continued paying on this refinanced mortgage for six months. In December 2003, his employer shuttered its facility and laid off all of its employees, Applicant included (see ex. 1; R.T., at 84).

Beginning in October 2004, Applicant prepared for a career as a real estate agent (ex. 1). While studying for his real estate license, he went to work for an assembly system. This employer encouraged him to purchase his own truck for work use (see ex. C; R.T., at 62). Under his arrangements with his employer, his employer would pick-up his fuel and other work-related expenses. Based on these suggestions, Applicant went out and purchased a personal truck for around \$20,000.00 (ex. C; R.T., at 62-63) with the intention of using it to pick up and deliver machines for his employer (R.T., at 64). He made payments on this truck before defaulting in June 2007 after his company (confronting a faltering economy) cut his hours (see exs. 2 through 5 and C). He owes approximately \$20,275.00 on this truck on a loan account that was charged off, according to his credit reports. When business did not materialize as Applicant anticipated, he tried to return the truck to the dealer (R.T., at 64-65). However, the dealer refused to accept the truck. As a result, Applicant still retains this truck, which is not operable (R.T., at 65).

Applicant struggled with his real estate business for about two years ((October 2004 to October 2006). And for a brief period, he was making enough money to take care of his family and safely discharge his truck and mortgage obligations. With improved income from his real estate practice and supplemental trucking business, he was able to refinance his home a second time, this time with an even lower variable rate. As a part of his 2005 refinance, he was received back \$30,000.00 in proceeds from the loan payout (R.T., at 97-98). He continued paying on this refinanced mortgage for six months, until both his real estate and supplemental delivery work .

When the assembly system he affiliated with ceased doing business, Applicant affiliated with a trucking concern to earn enough income to support his family (see ex. C). To undertake this work, he needed to have a certain type of commercial truck to meet his delivery orders. So, in November 2005, Applicant leased a truck that would enable him to do additional odd jobs to supplement his real estate income (R.T., at 51-52, 58). The lease value of this truck was \$24,000.00 (R.T., at 107). Under the terms of his lease, he could return the truck in one year for no penalty (see ex. C; R.T., at 59). His monthly payments were \$1,050.00 (R.T., at 59).

Applicant made his required monthly payments on his truck lease for over a year; even though he was barely able to break even on the jobs he contracted for (ex. C; R.T., at 59-60). So, after a year, Applicant approached his lessor about returning the truck (R.T., at 60). The dealer agreed to take the truck and try to sell it for him, but cautioned that Applicant would be responsible for the full price of the truck (a switch in terms according to Applicant). Applicant accepted the lessor's return terms and returned the truck to the lessor. While the lessor held the truck, Applicant continued to make his \$1,000.00 monthly payments (R.T., at 61). Six months later, the lessor advised that it could not sell the truck. Resigned to losing his truck through repossession, Applicant stopped making payments (R.T., at 61). He was later advised that the truck was sold at public auction, leaving an \$18,117.00 deficiency balance for Applicant to tender to satisfy his lease obligations (R.T., at 61-62). Applicant has never been able to work out any payment arrangements with the lessor, and the debt has since been charged off (see exs. 2 through 5).

For the past two years, the real estate market in his locality has steadily deteriorated. Unable to make much headway as a real estate agent, he essentially withdrew from the business in October 2006 and took a job as an in-house steel representative (see exs. 1 and C). Not long after he took this job, he suffered a non-work-related ankle injury, and was eventually laid off due to the uncertainty of his doctor's release (see exs. 1 and C).

Applicant's efforts to sell his house to cover his mortgage debt have not been successful (R.T., at 67), and he stopped making payments on his home (see 2 through 5). He has had little feedback from his lender on his short sale and refinancing requests (R.T., at 67, 100-01). In his last communication with the mortgagee, the lender informed him it was thinking about filing for foreclosure. Whether the lender will follow through with foreclosure is unclear. Applicant assures that the home next door to him recently sold for just \$105,000.00, which is less than half of what he owes on his mortgage (R.T., at 102).

Besides the charged off debts from his defaults on the two vehicles he acquired, Applicant accumulated two other debts. One was a credit card account he opened in June 2003 with creditor 1.a. His credit reports show a balance due of \$4,004.00 on this account was, which was charged off in December 2006 (see exs. 3 through 5; R.T., at 53). The second listed past due debt was a joint retail account opened with creditor 1.b in July 1997. His credit reports reflect a balance due of \$187.00 on this account, which was charged off in August 2007 (see exs. 2 through 5). Applicant tried to work out payment arrangements with both creditors, but was refused (R.T., at 56-57).

In his hearing testimony, Applicant expressed his intentions to pursue Chapter 7 bankruptcy (R.T., at 103-04), and documented his retainer agreement with a local bankruptcy attorney (see ex. B). After the, Applicant pursued Chapter 7 bankruptcy through the attorney he retained to initiate a Chapter 7 bankruptcy petition in his behalf. He documents the filing of a Chapter 7 petition in January 2009 (see ex. D). In this petition, Applicant scheduled secured debts as follows: his mortgage of \$454,824.00 on

his home valued at just \$174,500, property taxes of \$2,007.78, and the deficiency of \$18,117.00 on his leased truck (ex. D).¹ He scheduled unsecured non-priority claims of \$52,954.11 (ex. D). He has no retained assets other than his home and vehicle (covered by creditor 1.d). He lists income for the past four years as follows: \$46,000.00 from his 2008 employment, \$44,761.00 from his 2007 employment, \$12,028.00 from his personal business in 2006, and just \$5,314.00 from his 2006 employment (see ex. D).

Applicant's Chapter 7 package includes his certification that he received financial counseling within 180 days of filing his bankruptcy petition, in accordance with the Bankruptcy Code's legal requirements (see ex. D). A certificate of counseling by a certified financial counselor (dated December 1, 2008) is included in Applicant's bankruptcy petition (ex. D). The certificate of counseling recited that the counseling session was conducted by internet and telephone and did not include a prepared debt repayment plan.

Applicant is highly regarded by friends and coworkers (see ex. A; R.T., at 78-79). These friends and coworkers are universal in their praise of Applicant as a model employee and friend who is honest, trustworthy, and very responsible. Each of his documented references describe him as inspiring and motivating with excellent character qualities (see ex. A). He assures he lives within his means and drives an old Pinto vehicle.

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:

¹ The unsecured portion of this creditor's claim is \$280,324, which represents the difference between the creditor's secured claim on Applicant's home and the estimated fair market value of the home (\$174,500.00). Essentially, the unsecured portion constitutes the expected deficiency were the creditor to foreclose non judicially and perforce waive any deficiency against the debtor. What remains unclear is how the estimated overall secured claim reached the aggregate of \$454,824.00. Applicant's estimated secured debts on the home totaled only \$275,000.00. Presumably, the \$454,824.00 figure represents the present value of the loan at its maturity.

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 meritorious security guard for a defense contractor who accumulated a number of delinquent debts over an eight-year period spanning 1999 and 2007 due to work-related injuries and lay-offs. Some of these debts were resolved by a Chapter 7 bankruptcy discharge in 2000. The remaining debts are being resolved by a

second Chapter 7 bankruptcy petition. Considered together, and without resolution, his recurrent debt problems raise security significant concerns.

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 (except through bankruptcy) warrant the application of two of the disqualifying conditions (DC) of the Guidelines ¶ DC 19(a), inability or unwillingness to satisfy debts, and ¶19©) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to recurrent income shortages following job-related injuries and ensuing employment disabilities and job layoffs. He resolved his earlier round of delinquent debts with a successful bankruptcy discharge in 2000. With a family to support since 2003, recurrent layoffs through no fault of his own, and a collapsing real estate market in his locality, he has had to struggle financially to cover his living expenses. As a result, he accumulated additional delinquent debts since 2000.

Two of Applicant's largest listed debts involve deficiencies on vehicle acquisitions (both purchased and leased) that he had acquired to enable him to perform delivery services that did not materialize as anticipated in the face of a slumping economy in his locality. His largest debt involves his home that he has not been able to sell or refinance on more favorable terms with his lender.

Since receiving the SOR, Applicant has initiated considerable efforts to resolve his listed debts, but without any tangible success to date. Afforded an opportunity to petition for Chapter 7 relief following the hearing, Applicant documents filing a new Chapter 7 petition: this one in January 2009. By all accounts this promises to be a no-asset case, which should encounter no opposition.

Given Applicant's exhibited extenuating circumstances associated with his recurrent job-related injuries and layoffs, the limited resources that have been available to him and his family to address his accumulated debt delinquencies, and his documented responsible efforts to resolve his debts (first through repayment inquiries and then through Chapter 7 bankruptcy), Applicant may rely on ¶ MC 20 (b), "the conditions that resulted in the financial problem 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 under the circumstances," of the Guidelines for financial considerations. Extenuating circumstances continue to impact Applicant in his current efforts to resolve his accumulated debts.

Mitigation credit is also available to Applicant based on his credible proofs of good faith repayment efforts and bankruptcy initiation when repayment initiatives failed to produce any tangible payment results, age of the debts, and good-faith disputes. Age of the debts included in Applicant's first bankruptcy 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 applicability, while not dispositive. ¶ MC (d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has some applicability as well.

While the counseling advice Applicant relied on from his bankruptcy attorney does not technically fit the definition of counseling services under the Guidelines, he is to be credited with earnestly looking for sources of financial advice with the resources available to him. He may take advantage, too, of ¶ MC 20©), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." Based on the certified counseling he is credited with receiving and his initiated efforts to date, prospects for his gaining important insights in handling his finances in the future appear to be promising.

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).

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations, his documented steps taken to resolve them, and the responsibility and trustworthiness he is credited with in his work and personal life as a struggling head of a family, Applicant mitigates security concerns related to his proven debt delinquencies. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.g of the SOR.

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):	FOR APPLICANT
Sub-paras. 1.a through 1.g:	FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge