



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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)
-----) ISCR No. 08-06567
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

July 27, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On February 24, 2009 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 April 29, 2009 and requested a hearing. The case was assigned to me on May 18, 2009, and was scheduled for hearing on June 24, 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 five exhibits (exs. 1 through 5); Applicant relied on one witness (himself)

and five exhibits (exs. A through D). DOHA received the transcript (R.T.) on July 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

In June 2009, Applicant's former employer (a sub-contractor) advised DOHA of Applicant's separation in June 2009. However, a summary provided on a similar form by Applicant's prime contractor employer the same month contains no separation date. Based on the information furnished DOHA to date by Applicant's last identified employer, DOHA jurisdiction vested to convene a hearing to determine Applicant's security eligibility.

Once the hearing commenced, Applicant indicated he was "kind of on a leave of absence" from his employer since March 2009 and has a job waiting for him when he returns (R.T., at 74-75, 84-85). Information supplied DOHA reports that Applicant's employer is sponsoring his clearance application (R.T., at 85). Prospects remain good for Applicant's returning to work with his current employer should he obtain a favorable determination of his security clearance application. In accordance with ¶ 4.4.1 of the Directive, I permitted Applicant's hearing on the merits to proceed.

Before the close of the hearing, Applicant requested leave to supplement the record with documented financial counseling with a debt consolidation firm and dental/medical bills. For good cause shown, Applicant was granted two days to supplement the record with documented financial counseling with a debt consolidation firm and dental/medical bills. The Government was afforded two days to respond.

Within the time permitted, Applicant provided copies of (a) a consumer credit counseling action plan with an attached budget and creditor list, (b) an e-mail exchange between Applicant and creditor 1.f, and (c) an e-mail exchange between Applicant and Department Counsel. Department counsel did not object to the admission of the submissions. The submissions were admitted as exhibits B and C.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accumulated six delinquent debts, (b) had a judgment entered against him in June 2001 for \$7,948.00, (c) had an IRS tax lien entered against him in January 2001 (since released) for \$25,441.00, and (d) had a state tax lien entered against him in September 1999 (since released) for \$6,701.00.

In his answer to the SOR, Applicant admitted some of the debts but denied others. He claimed most of the debts have since been paid in full (creditors 1.a, 1.d, 1.e, 1.g, 1.h and 1.i. He claimed that he is waiting for agreement on repayment plans that cover creditors 1.b, 1.c, and 1.f.

Findings of Fact

Applicant is a 52-year-old former senior field engineer for a defense contractor who seeks a security clearance. Applicant worked for his defense contractor for about six months before he was laid off in March 2009 (R.T., at 52-53). 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 was raised in a military family. His father was a Vietnam war veteran and a sergeant first class who spent 35 years in the U.S. Army before he passed away in 1992 (see ex. A). Applicant is divorced and has a daughter from his marriage (see ex. 1; R.T., at 60-61). Currently, he has joint custody of his daughter (R.T., at 63).

Between 1999 and 2004, Applicant was employed in internet-related businesses (see ex. 1). One was a dot-com company that failed in the late 1990s "when the bubble burst" and customers stopped paying their bills (R.T., at 48-49). This business collapse caused "a lot of financial burdens that I had in 1999 to 2001" (R.T., at 21, 56, 71). After spending several months (between November 2004 and March 2005) with a communications firm as a communications engineering manager (see ex. 1), he formed and operated his own high-tech company for a number of years (2005-2007) that contracted with foreign governments to install wireless communications (R.T., at 58-60). While his company prospered, he was current with all of his business and personal creditors. Once his business faltered in 2007, he could not keep up with his creditors, and became delinquent with many of his accounts (R.T., at 49-50).

Applicant joined a major defense contractor in September 2007 in an engineering capacity and worked for this company for several months (see ex. 1: R.T., at 53) as a senior engineer before his layoff. Since November 2007 he has held a variety of jobs. He drove a taxicab to support himself and his three-year old daughter who has had major medical issues to contend with (see ex. A; R.T., at 49-50). He has seen his income drop about 90 per cent during this difficult period, and has struggled to keep up with his creditors.

Between 1993 and 2001, Applicant accumulated a number of delinquent debts during periods of unemployment and underemployment. Two of the largest debts involve federal and state tax liens. Records show that a federal tax lien was entered against Applicant in January 2001 for \$25,441.00, which covered tax years 1993 through 1997. A state tax lien was entered against Applicant in September 1999 for \$6,701.00. Both of these liens have since been released (ex. A). Applicant's other large debt is a judgment entered against him by creditor 1.f in June 2001 for \$7,948.00 to cover back rent owed to a landlord for a leased apartment unit. This judgment remains outstanding.

Applicant's remaining debts (six in number) are consumer-related, small for the most part, and exceed \$3,000.00 in the aggregate. Applicant documents payment of three of these consumer debts (creditors 1.a, 1.d and 1.e). He engaged a debt

counseling service in June 2009 to explore an action plan for repaying his three remaining debts: 1.b (for \$1,775.00), 1.c (for \$8,019.00), and 1.f (the judgment creditor). All but one of these covered creditors have been located. Currently, he has enlisted the assistance of his debt plan counselors to locate creditor 1.f and convince him to participate in Applicant's repayment plan (see exs. C and D; R.T., at 49-50). To date, Applicant's attempts to contact this landlord creditor to explore payment plan alternatives have not been successful (see ex. D; R.T., at 77). So far this year, he is able to document one payment to each of the two creditors identified as agreeable participants in his plan (see ex. A; R.T., at 36-37), on the strength of his very limited income. Applicant continues to wait for positive feed-back from creditor 1.f.

The financial consumer credit counseling service (CCCS) that met with Applicant in June 2009 reviewed his work history, his current layoff status, his limited monetary benefits from his unemployment insurance, and the size of his three major debts he has listed in his proposed action plan. Upon completing its evaluation of Applicant's resources, the firm devised a repayment plan that permitted monthly repayments to each of the three listed creditors (*i.e.*, creditors 1.b, 1.c and 1.f) in the amount of \$75.00 each (ex. B). His financial counselors advised that he would be able to increase his monthly payments once he returned to work. (ex. B).

Applicant attributes most of his recent debt problems to periods of unemployment and underemployment he intermittently experienced following the internet crash in 2001 (R.T., at 71). Ensuing medical complications with his daughter required surgical intervention in September 2005 to repair an intestinal blockage. Child custody obligations and other family-related expenses placed additional strains on his limited resources during periods when he struggled with low-paying jobs and work-furloughs (R.T., at 60-61, 68-72).

Once on a promising course of financial recovery with a thriving internet business he owned and managed, Applicant's available resources quickly dissipated after his business failed in 2007. He found full time employment as an engineer with a defense contractor in September 2007, and worked for this contractor for a couple of months (ex. 1). Unable to retain this job, he settled for driving taxi cabs (R.T., at 53-55).

Since Applicant's layoff from his current employer, he has relied solely on his unemployment insurance to take care of his daughter and his other financial needs (R.T., at 54). Applicant currently receives about \$1,500.00 a month in unemployment benefits (see ex. 2; R.T., at 62). He estimates his current monthly expenses to exceed his current income. Child support (roughly 25 per cent of his monthly income) and increased rent account for most of his monthly expenses (R.T., at 63). His child support is deducted from the monthly unemployment checks he receives (R.T., at 86-87).

Applicant has no savings and several aging vehicles that have little market value (R.T., at 64-66, 69). With only his unemployment benefits to cover his bills, he currently limits all of his payments to the "bare minimum" (R.T., at 86). To repay some creditors, he is forced to prioritize his creditor payments. In prioritizing his debts, he pays certain

creditors and makes other creditors wait until he has more money to pay them as well (R.T., at 69). Typically, he pays certain bills one month, and other bills the following month (R.T., at 68-69). Once he is able to return to work full time, though, he estimates that he will be able to repay his listed debts in a reasonably short period of time (R.T., at 69). At the moment, Applicant's unsatisfied listed debts approximate around \$17,000.00 (see ex. 2; R.T., at 88-91. Since he does not have any credit cards, he uses only debit cards to pay his bills (R.T., at 83-84).

Currently, Applicant is working with a debt counseling firm to work out payment plans with his three remaining creditors (R.T., at 89-96). The financial consumer credit counseling service that met with him in June 2009 reviewed his work history, his current layoff status and limited income from his unemployment benefits and the size of the three major debts he has listed in his action plan. Upon completing its evaluation of Applicant's resources it devised a repayment plan that permitted monthly repayments to each of the three listed creditors (*i.e.*, creditors 1.b, 1.c and 1.f) in the amount of \$75.00 each (see ex. B). His financial counselors advised that he would be able to increase his monthly payments once he returned to work. (ex. B).

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.

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 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 E.O. 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 (currently on a leave of absence from his defense employer), accumulated a number of delinquent debts during periods of unemployment and underemployment. While he is able to document payment of his federal and state tax debts and several small debts, he has not heretofore been able to make any headway with his three remaining large creditors. He is currently working with a credit counseling and debt consolidation firm, which has proposed a modest repayment plan pending his return to work. Applicant's delinquent debts and mixed success in resolving them all to date are security-significant.

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 or otherwise resolve many of them 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 2001 and 2009. Faced with so many pressing medical issues at home with his daughter and challenges in finding sustainable work during down periods in the high tech industry, Applicant changed career paths and re-directed his engineering skills and experience to defense contractors who required security clearances. For the ensuing three years (2007-2009), he concentrated his energies and skills on defense-related employers. When laid off by the first defense employer, he turned to driving taxi cabs to earn enough to take care of his himself and his family (including his ill daughter). Since his most recent layoff, he has had no other work and has had to rely exclusively on his unemployment insurance to meet his financial needs.

Applicant's progress to date in regaining control of his finances is promising, but still represents a considerable work in progress that is far from resolution with his available resources. He still is working on resolving his remaining three debts (exceeding \$17,000.00 in the aggregate), and can provide no estimates as to when he will be able to pay off these remaining debts without a full time job. His unemployment benefits are quite modest and will expire altogether within the year. 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, however, based on the facts of this case. Neither Applicant's oral or written evidence reflect any sustained voluntary repayment efforts on his behalf on his major debts. His documented payments and payment agreements with individual creditors and a 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.

Applicant's financial counseling with his CCCS counselors and active steps he has taken to develop a payment plan with the counseling service entitles him to partial application of MC ¶ 20(c), "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." However, he has not provided enough probative evidence of his taking control of his finances at this time to warrant full application of this mitigating condition.

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).

By a whole person assessment of Applicant's judgment, reliability and trustworthiness, Applicant's financial issues may be evaluated in a broader context than the individual disqualifying and mitigating conditions permit. To be sure, many of his debts are attributable to unforeseen economic conditions that affected both his businesses and their industry as a whole. His cited business achievements and family commitments reflect positively on his career choices and professional growth. And, certainly he has taken some steps to resolve his debts and provide needed medical benefits for his young daughter, even during adverse conditions. All of this works to Applicant's favor.

Still, Applicant has not shown enough tangible effort in addressing his remaining debts (including a still outstanding judgment with creditor 1.f) to mitigate his delinquent debts enough to be able to credit him with restored control over his finances. In balance, the whole person assessment does not enable Applicant at this time 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 in the past 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, 1.c and 1.f. Favorable conclusions warrant with respect to subparagraphs 1.a, 1.d and 1.e, and 1.g through 1.i.

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, 1.c and 1.f: Against Applicant

: Sub-paras. 1.a, 1.d, 1..e, and
1.g through 1.i: 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