



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-08932

Appearances

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

March 4, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On April 21, 2009, 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 July 21, 2009, and requested a hearing. The case was assigned to me on September 1, 2009, and was scheduled for hearing on December 7, 2009. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of six exhibits (ex.). Applicant relied on one witness

(himself) and three exhibits. The transcript (Tr.) was received on December 15, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) filed for Chapter 13 bankruptcy in January 2009 and (b) accumulated 22 debts exceeding \$20,000. In his response to the SOR, Applicant admitted each of the allegations without explanations.

Findings of Fact

Applicant is a 49-year-old security officer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant is single and has no children. He has worked for the same contractor for 15 years and has held a security clearance since 1993 (Tr. 26, 29). Between 2002 and 2008, he accumulated over \$40,000 in credit card and auto financing debts, and became overextended before he realized it (Tr. 28, 34).

In or about 2005, Applicant tried working with a credit counseling firm to resolve his debt problems at a cost of \$600 a month, but to no avail (Tr. 33). Still concerned about his debts, Applicant petitioned for Chapter 13 wage-earner's relief in January 2009 (see exs. 2 and A through C; Tr. 30-34). Before filing his petition, he completed a pre-requirement of on-line financial counseling in December 2008 (see ex. A). He scheduled \$49,000 in unsecured claims that included all of the debts listed in the SOR. Applicant's plan was approved by the bankruptcy court in February 2009. Its terms obligated him to make monthly payments of \$677 to the bankruptcy trustee (see exs. A and B; Tr. 34).

Before petitioning for Chapter 13 relief, Applicant tried working with a credit counseling firm to resolve his debt problems at a cost of \$600 a month, but to no avail (Tr. 33). Unable to pay off his creditors directly, he turned to his Chapter 13 option (Tr. 33-34).

Since February 2009, Applicant has made regular payments of \$677 a month to the bankruptcy trustee (see ex. B; Tr. 34-35). He expects to complete his plan in six to seven years (Tr. 34).

Applicant has no credit cards at the present and lives by himself in a mobile home he leases for \$670 a month (see ex. A; Tr. 35-36). He has a net income of \$2,800 a month (Tr. 37). His expenses consist of his monthly rent (\$670), utilities (\$200), internet use (\$80), and his trustee payments (\$677). He assures he has regained control of his finances and will not let his finances deteriorate again (Tr. 39-40). His assurances are sincere and made in good-faith.

Applicant's father extolled Applicant's love for his country (Tr. 45). He described Applicant's youth as problem-free. Applicant enjoys his work, has had no security violations, has good fitness reports, and receives annual pay increases of about three and one-half per cent (Tr. 40, 46).

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 adjudication policy concerns 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. AG ¶ 18.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for 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. 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 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 proof shifts to the applicant for the purpose of establishing his or his 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 an experienced employee of a defense contractor who accumulated delinquent debts over an extended period of time. Concerned about the state of his finances, he sought financial counseling, and successfully petitioned for Chapter 13 relief in January 2009. He has continued to make his required monthly payments under his approved plan and estimates six to seven years to complete his plan. His accrued debt delinquencies raise continuing security concerns over the stability of his finances.

Applicant's pleading admissions of the debts covered in the SOR (sometimes referred to as official admissions) negate the need for any independent proof (see

McCormick on Evidence, § 262 (6th ed. 2006)). All but one of his listed debts (creditor 1.k) are fully documented in his latest credit reports, and provide ample independent proof of his debts. Applicant's accumulation of delinquent debts (since included in his Chapter 13 bankruptcy petition) warrant the application of two of the disqualifying conditions (DC) of the financial consideration guideline: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c), "a history of not meeting financial obligations."

With almost a year's worth of regular trustee payments under his approved Chapter 13 plan to his credit, Applicant may be credited with good, sustaining progress in fulfilling the requirements of his plan. To date, he has made at nine regular payments of \$677 to the bankruptcy trustee and established a pretty good track record of payment compliance to demonstrate his earnest commitment to resolving his debts and restoring control of his finances. Applicant's circumstances and good-faith repayment efforts entitle him to apply several mitigating conditions: MC ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," and MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

Because Applicant obtained some earlier financial counseling and completed a pre-bankruptcy counseling requirement, he is entitled to some 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," as well.

In this case, Applicant's debt delinquencies arose in large measure due to his failure to responsibly manage his finances. He could be reasonably expected to have exerted more responsible efforts in addressing his debts before it became necessary to petition for Chapter 13 relief. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he failed to demonstrate any material payment progress before turning to Chapter 13 relief in 2009.

It is true, certainly, that 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 impose important obligations 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 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 the sufficiency of the

applicant's demonstrated trust and judgment necessary to safeguard classified information.

All told, however, Applicant has established a good track record for paying his debts under a court-approved Chapter 13 payment plan. He currently lives within his means; his Chapter 13 payment history is compliant with his plan requirements; and his prospects for successfully completing his plan are promising.

Whole-person assessment of Applicant's overall character and recent debt management efforts enable him to surmount the judgment questions raised by his accumulation of delinquent debts. His seasoned payment efforts under his initiated Chapter 13 plan are enough to enable him to surmount concerns over his lack of historical progress in addressing his outstanding accounts.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and his concerted efforts under his court-approved Chapter 13 plan to pay his debts, safe predictive judgments can be made about his ability to repay his accrued debts and restore his finances to manageable levels commensurate with his holding a security clearance. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.v.

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

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas 1.a through 1.v: 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

