



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-08976
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Jennifer M. Kies, Esquire; Daniel C. Schwartz, Esquire

June 16, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On November 20, 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 December 9, 2008, and requested a hearing. The case was assigned to another judge on January 6, 2009, and re-assigned to me on March 4, 2009. The case was scheduled for hearing on March 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 nine exhibits;

Applicant relied on two witnesses (including himself) and 24 exhibits. The transcript (R.T.) was received March 31, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of his efforts to resolve his creditor 1.a debt and payment of his creditor 1.b debt. . For good cause shown, Applicant was granted 10 days to April 3, 2009 to supplement the record. The Government was granted three days to April 6, 2009, to respond. Within the time permitted, Applicant provided copies of his statement covering his payment efforts, letters to his creditor 1.b creditor seeking confirmation of payment, and a payment confirmation from creditor 1.b. Department Counsel offered no objection to the admission of any of Applicant's proffered exhibits. The submissions were admitted as exhibits Y through CC.

Following the close of the record, Applicant moved to supplement the record with additional documentation from creditor 1.b regarding this creditor's acceptance of Applicant's settlement payment and expressed intention to report his account with the credit bureaus as "settled." Department Counsel did not oppose Applicant's request, and for good cause shown, his request was granted. Applicant's proffered supplemental exhibit was admitted as exhibit DD.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated three debts exceeding \$91,000.00. They are listed as creditors 1.a through 1.c and will be referred to in this way in the findings and conclusions.

For his answer to the SOR, Applicant admitted to of the debt allegations. He claimed that his creditor 1.a debt had been written off, and that he had successfully worked with the creditor to satisfy other debts without hearing anything back on this debt. He claimed he has made good-faith efforts to resolve his creditor 1.b debt as best he could given his divorce and court orders for child support and alimony. Appellant denied being indebted to creditor 1.c, citing his executed deed in lieu of foreclosure on his marital residence, which was necessitated after his wife moved out of the residence and obtained child support. Applicant explained that the bank which accepted the deed in lieu of foreclosure took possession of the property and resold it. He is currently working with credit reporting agencies to remove any reported bank claims from his credit reports.

Applicant claimed he is required to hold a security clearance to retain his job and has never committed a security violation in the 24 years he has held a security clearance. He claimed he acted responsibly in his efforts to contact his creditors and resolve his debts. He claimed he can never be blackmailed, and has since stabilized his finances.

Findings of Fact

Applicant is a 48-year-old deputy chief engineer 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 W in October 1992 (see ex. 1). He has two twin four-year old boys from this marriage. While married, Applicant and W each worked and relied on their dual income to pay their bills (R.T., at 89). Applicant and W maintained a budget and kept track of their bills and spending (R.T., at 90). Rarely did they encounter any financial problems during their marriage (R.T., at 90-91).

Applicant received his bachelor of science degree in computer science from a recognized university in 1987, and earned a master degree in information systems from an accredited university in 1998 (see exs. 1-3 and G; R.T., at 46-47). Between 1992 and June 2007, Applicant worked for a number of companies. Most of his work required a security clearance (R.T., at 49, 52, 68).

For over 20 years during his marriage to W, Applicant exercised excellent financial responsibility in supporting his family and managing his finances. He and W refinanced their home (purchased in 2001) in July 2006 based on an appraised value of \$627,000.00 (see ex. J). The new mortgage payment of \$4,000.00 a month required the incomes of W and Applicant to support their household expenses and mortgage payments (ex. J; R.T., at 107).

Applicant and W separated in February 2006 (see ex. H; R.T., at 165) after Applicant learned of his wife's having an affair with another man (R.T., at 92). W filed for divorce in November 2006 (see ex. J; R.T., at 92, 164-65). In February 2007, W and their two children moved out of their house. Once she vacated the home, she stopped contributing to household expenses and the mortgage (R.T., at 164). In May 2007, W filed for divorce and sought both child support and alimony (R.T., at 92-94). Applicant and W finalized their divorce in January 2008 (see exs. 1 and H; R.T., at 96, 165-66).

Under his separation agreement with W, Applicant is obligated to pay W monthly child support of \$2,250.00 and monthly alimony of \$850.00 (see exs. H and J; R.T., at 94-97). Applicant expects his alimony payments to end in seven years (R.T., at 95). His separation agreement provides for broad joint custody of his two children that permits him to keep his children twice a week (R.T., at 94). W has never expressed any interest in marriage counseling, and they have never pursued reconciliation after their separation.

With his limited income following his separation to cover his mortgage and household expenses, Applicant encountered considerable difficulty paying the mortgage and keeping up with his credit card obligations (R.T., at 107-08). Sale opportunities

were limited, too, as the value of his house had fallen below the face amount of his mortgage. Not only could he not pay his mortgage or effectively dispose of the property, but he fell behind in his card debts with creditors 1.a and 1.b. Ultimately, these latter debts were written off by the creditors in the respective amounts of \$5,503.00 and \$43,610.00 (see exs. 5 and 6; R.T., at 104).

Unable to cover his mortgage and other expenses, Applicant contacted his creditor 1.c mortgagee in March 2007 to explore prospects for lowering his monthly mortgage payments (see ex. J; R.T., at 107). Creditor 1.c, in turn, informed Applicant that it could do nothing for him until he had defaulted on his mortgage payments and documented his listing of the property for sale in a vacant state of condition (R.T., at 108-09).

Creditor 1.c followed up its oral advice with a written letter in June 2007 acknowledging Applicant's request for a loss mitigation work out plan and forwarding an explanation of financial hardship form (see ex. J). Appellant promptly completed the furnished financial hardship form and returned it to creditor 1.c. In his letter he explained his circumstances. He also informed creditor 1.c that due to the permanent circumstances of his situation, he could foresee no other recourse but to request consideration of a deed-in-lieu of foreclosure (ex. J). Applicant asked creditor 1.c to work with him on accepting a deed-in-lieu of foreclosure.

Creditor 1.c accepted Applicant's request for a deed-in-lieu of foreclosure in August 2007 (see ex. L; R.T., at 117), and furnished Applicant a prepared deed for his written execution. Applicant and W executed the prepared deed in February 2008 and returned it to the creditor (see ex. M; R.T., at 117-18). Creditor 1.c, in turn, assigned Applicant's mortgage on the covered property to another financial institution for valuable consideration in April 2008 (see ex. N, R.T., at 120). Creditor 1.c furnished a transaction listing report to Applicant in December 2008 (ex. O). The report tracks Applicant's payment history with his mortgage and confirms the payoff of Applicant's \$595,000.00 first trust deed in October 2008 (see ex. O; R.T., at 120-21). In a December 2009 letter to Applicant, Creditor 1.c confirmed its removal of Applicant's mortgage debt from his credit reports upon its acceptance of a deed-in-lieu of foreclosure from him (see ex. P; R.T., at 121-22).

Prior to his divorce, Applicant had three separate accounts with creditor 1.a: a checking account, a savings account, and a credit card (R.T., at 152). Following his divorce, he made concerted telephonic efforts throughout 2008 and early 2009 to settle his creditor 1.a checking account (see exs. Y and Z; R.T., at 156-57). Applicant did provide documentation of a written offer to creditor 1.a in July 2008 to settle another of his accounts with the same creditor with a lump sum \$5,000.00 payment by credit card (see ex. X). Applicant confirms he was able to successfully settle this account (R.T., at 152-53, 180-81).

Applicant, however, has not experienced any success in discussing his creditor 1.a account with any representative of the creditor. (R.T., at 178-79). When he was

able to reach a customer operator associated with creditor 1.a in March 2009, he was told the account was previously written off as a bad debt and could not be accessed (see exs. Y and Z; R.T., at 156-57). The creditor 1.a operator furnished him a number to call to discuss his account. When Applicant called this number, he determined it to be a wrong number (see ex. Z). Applicant assures he would very much like to resolve his creditor 1.a debt, and would like a number or address to reach a creditor 1.a authorized representative to resolve this debt (ex. Z).

Applicant's creditor 1.b debt represents an accrued debt on a line of credit opened by Applicant in or about 1994. Applicant obtained the line of credit to finance home expenditures for an upgraded bathroom in the basement of his home to accommodate his in-laws while they helped in the child support of his young twins (R.T., at 124-25, 168-69). For so long as he and his wife maintained their dual incomes, they were able to comfortably manage this creditor 1.c account (R.T., at 125). When his wife abandoned the home and stopped paying on their joint accounts, he encountered trouble in meeting the monthly payments on this account, and stopped paying on it (R.T., at 125-26, 170-71). When he asked creditor 1.c for payment assistance, the creditor was not helpful. After talking with several debt consolidation groups, he determined to deal with the creditor directly.

In an unsigned August 2007 letter from a debt collection attorney purporting to represent creditor 1.b, the identified attorney offered to accept \$22,613.00 in full settlement of the debt, payable in two installments: an initial \$5,000.00 payment and the \$17,613.00 balance payable a month later (see ex. Q; R.T., at 127-31). Applicant promptly remitted the first agreed payment of \$5,000.00 to the creditor's collection agent with the understanding he would remit the balance in 30 days (see ex. R; R.T., at 127-33, 172). When he called the attorney agent's office in September 2007 to try and work out a more flexible payment plan on the \$17,613.00 balance, he was told that the attorney did not work there anymore, and the payment plan was no longer operative (see ex. T; R.T., at 139-40, 172-75).

In July 2008, Applicant was contacted by a successor collection agent for creditor 1.b, and arranged a new hardship payment plan with this new agent (see ex. T; R.T., at 175-76). This arrangement called for Applicant's making a \$500.00 payment on another credit card (bringing the debt down to \$43,660.00) and remitting \$10.00 a month until his finances stabilized (see ex. T). Applicant never received any confirmation of this arrangement from the creditor. Two months later (in October 2008), he was advised telephonically by this collection agent that the new arrangement was no longer valid (see ex. T; R.T., at 175-76). When he received no response from creditor's 1.b's collection agent, he concluded that the creditor had determined to write off the debt, and so informed the creditor in his follow-up letters in December 2008 and January 2009 (see exs. T and U).

In March 2009, Applicant received a written offer from a new collection agent of creditor 1.b (see ex. V; R.T., at 144-45). In its March 2009 letter, creditor 1.b offered to settle its debt for a lump sum payment of \$6,541.61. Applicant accepted the offer and

made prompt payment in full on his credit card (see ex. W; R.T., at 145-51). Applicant assures he has enough cash flow under his established budget to make the payments on the credit card he used to pay his creditor 1.b debt.

Concerned about the absence of any payment satisfaction confirmation from creditor 1.b, Applicant wrote to creditor 1.b and its new collection agent in May 2009 (exs. AA and BB) seeking confirmation of his \$6,541.61 payment in full settlement of the outstanding balance (see exs. AA and BB). Creditor 1.b confirmed in an April 2009 letter its receipt of Applicant's \$6,541.61 payment in full settlement of the debt (see ex. CC). This creditor 1.b account is paid in full. Creditor 1.b, in turn, committed to notifying the credit reporting agencies of Applicant's "settled" account (see ex. DD).

Since encountering debt problems following his marital separation and divorce, Applicant has worked hard to repay his debts and restore his credit (R.T., at 159-62). In accordance with his separation agreement, he has full joint custody over his two young boys and spends almost every weekend with them (R.T., at 94). Additionally, he has them with him two to three nights a week in his rented condominium (R.T., at 99-101). Applicant has reduced the number of credit cards he owns to just one, adheres to a prepared budget, and is current in all of his other accounts (see exs. 6 and I; R.T., at 99-103). While he has never committed to a counseling program, he has talked to divorce and tax/bankruptcy lawyers to gain a better understanding of all of the legal and tax ramifications of his divorce (R.T., at 105).

Applicant is highly regarded by his supervisors past and present, and by the military commands he has served for over 15 years (see exs. A through E; R.T., at 55-85). The executive director of his department praises his engineering expertise and work product, and characterizes his abilities, integrity and loyalties as of the "highest order" (see ex. D).

Applicant's current program manager who has daily contact with him considers him an excellent technical programmer (R.T., at 28-29). Aware of Applicant's financial problems, this program manager is of the opinion that Applicant followed all of the rules of financial responsibility, and is reliable and trustworthy (R.T., at 32-34). Applicant has received numerous awards and commendations in recognition of his many contributions to his employer and its U.S. Air Force customer (ex. F).

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 E2(a) 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, ¶ 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 highly regarded deputy chief engineer for a defense contractor who accumulated several delinquent debts following his divorce and loss of joint income from his marriage. The three listed debts are considerable (over \$91,000.00 in listed accrued delinquent debts). Until last year, none of these debts were resolved. Without resolution these debts create 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 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 in part to his divorce and ensuing loss of joint marital income to cover his refinanced mortgage and consumer debts, and in the imposition of significant monthly child support and marital alimony following his final divorce decree and marital settlement. He has worked earnestly these past two years to resolve his mortgage debt (which exceeded the diminished value of his home) and his two accrued consumer debts. His furnished documentation corroborates his oral claims that he has resolved his two largest debts, as he struggles to find a creditor 1.a representative who will work with him to resolve his smaller creditor 1.a debt. Today, only Applicant's \$5,500.00 creditor 1.a debt remains unresolved, despite earnest Applicant efforts to address.

Faced with so many pressing challenges to resolve his debts, support his family, and restore his credit, while continuing to provide high quality service to his employer, Applicant has succeeded in not only favorably impressing his supervisors at work, but in resolving all but one of his delinquent debts, keeping his current accounts up to date, and providing uninterrupted support for his children and ex-wife.

Based on his evidentiary showing, extenuating circumstances are associated with Applicant's inability to address his mortgage amidst a falling real estate market to discharge all of his consumer obligations without the joint marital income he came to rely on during his marriage to W. Available to Applicant is ¶ 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." While some judgment problems persist over Applicant's deed-in-lieu of foreclosure to cure a mortgage default and the delinquent consumer debts he accrued during difficult financial circumstances, they are considerably extenuated and more recently mitigated by his restorative efforts.

Because of the limited income available to Applicant between 2007 and 2009, he has not heretofore been in a position to address his large mortgage debt and deficiency balances associated with creditors 1.a and 1.b. Neither of these creditors have made any noticeable collection efforts during the past three years, and there is no evidence that any of his listed creditors will make any payment demands in the foreseeable future. With the debts of creditors 1.b and 1.c now clearly resolved, only creditor 1.a remains as a potential claimant.

True, creditor 1.a charged off its debt some time ago and shows no inclination to reopen Applicant's account for payment or settlement. So, at this time, he is essentially free of any collectible debt. For all practicable purposes, he is no longer at risk to having to raise large sums of money to resolve his debts. That the creditor may no longer be seeking payment enforcement is not controlling, however; judgment and reliability issues still retain their relevance in assessing Applicant's overall reliability and trustworthiness.

In recognition of the concerted efforts Applicant has made to resolve all of his debts in the aftermath of his divorce, mitigation credit is generally available to him based on his credible proofs of his systematic good faith repayment efforts. Age of the one still unresolved debt (creditor 1.a) 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," and ¶ MC 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Neither mitigating condition is dispositive, but both have some applicability to Applicant's situation.

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 permits both extenuation and mitigation of Applicant's accumulated delinquent debts. Extenuating circumstances associated with his divorce, loss of historical spousal income to meet his mortgage and consumer obligations, and imposed child support and alimony, and the deteriorating housing market in his area, together created a confluence of factors that temporarily impaired his ability to meet all of his financial obligations. Judgment lapses do not play any material role in his debt accumulations. There is no evidence presented that Applicant was living beyond his means during his marriage. Since his separation and divorce, he has done all that could be reasonably expected of him to pay his debts and responsibly and seasonably and care for his children's needs. His good judgment and trustworthiness draw reinforcement

from past supervisors and military commands he has served, as well as from his program manager who works closely with him and can attest to his strong character.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the isolated and aberrant circumstances associated with his debts, and his documented steps taken to resolve them, the responsibility and trustworthiness he is credited with in his work and personal life as a single father who provides hands-on personal and financial support for his children, he mitigates judgment and trustworthiness concerns related to his debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

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.c: 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

