



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-09323
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

July 24, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On January 29, 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 Applicant eligibility for 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, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on April 6, 2009, and did not supplement the record. The case was assigned to me on June 18, 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 (a) petitioned for Chapter 13, bankruptcy in June 2003, which was dismissed in October 2005 and (b) accumulated 19 delinquent debts exceeding \$24,000.00.

For his response to the SOR, Applicant admitted each of the allegations. He added no explanations.

Findings of Fact

Applicant is a 48-year-old technical support specialist 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 married in November 1984 (see item 4). He has three children from this marriage, ages 13, 18 and 21 (item 4).

Applicant petitioned for Chapter 13 bankruptcy relief in June 2003. Credit reports reveal that his Chapter 13 petition was dismissed in October 2005. Reasons for the dismissal are not reported.

Between 2000 and 2008, Applicant accumulated a number of debts that are reported to be delinquent in his December 2008 and December 2007 credit reports (see items 6 and 7). His consumer debts exceed \$24,000.00 in amount. Applicant advised in his October 2008 answers to the Government's interrogatories that he is considering petitioning for Chapter 7 bankruptcy (see item 5).

Applicant does not provide any documented explanations of his debt accumulations or why he has not pursued financial counseling and debt consolidation before considering Chapter 7 bankruptcy relief. He does not indicate whether he has received financial counseling or considered debt consolidation. Nor does he provide any explanations or evidence of corrective steps he has taken to resolve his outstanding debts.

Applicant did not include any endorsements or performance evaluations. Both might have been helpful in evaluating his overall contributions and trustworthiness.

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. Adjudicative 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 is a technical support specialist for a defense contractor who petitioned for Chapter 13 bankruptcy (dismissed) and accumulated a number of delinquent debts. These delinquent debts were accumulated between 2001 and 2008 and have not been addressed according to Applicant's credit reports.

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 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 DC ¶19(c) "a history of not meeting financial obligations."

Little is known of the circumstances that contributed to Applicant's debt delinquencies and his failed Chapter 13 petition. Without more information about the circumstances surrounding his debts, his filing for Chapter 13 relief, and his past efforts (if any) in repaying or otherwise resolving his delinquent debts, Applicant cannot be credited with any notable progress to date in regaining control of his finances. Further, he provides no hard assurances of any commitment to resolve his debts in the foreseeable future. Applicant's finances still require a good deal of effort on his part to fully stabilize them.

Considering his failure to furnish documented explanations of his debts, his dismissed Chapter 13 petition, and his failure to provide evidence of responsive steps he initiated to address his debts, Applicant may not take advantage of 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)." Application of MC ¶ 20(b) is two-pronged in its requirements. First, an applicant must make a documented showing of extenuating circumstances associated with his accumulations of delinquent debts. Second, he must display responsible efforts in addressing his debts, both during and

after the precipitating events have subsided. Here, Applicant has provided no qualifying documentation of either MC ¶ 20(b) requirement to warrant application of this mitigating condition. Application of any part of MC ¶ 20(b) is unjustified.

Mitigation credit is not available to Applicant either under any of the other mitigating conditions based on the lack of any probative evidence of restorative steps taken by him to date. Afforded an opportunity to supplement the record with documented contacts and work-out arrangements with some or all of his listed creditors, Applicant declined to do so.

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 does not enable Applicant to surmount the judgment questions raised by his failed Chapter 13 petition and his ensuing accumulation of still unresolved delinquent debts. To date, Applicant has not shown any tangible efforts to resolve his outstanding debts to overcome security concerns about the state of his finances.

Considering the record as a whole, it is still too soon to make safe predictive judgments about Applicant's ability to resolve his old consumer 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 1.a through 1.t.

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. 1.a through 1.t:

Against 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 a security clearance for Applicant. Clearance is denied.

Roger C. Wesley
Administrative Judge