



**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. 08-09920

Appearances

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

February 22, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On April 7, 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 May 15, 2009, and requested a hearing. The case was assigned to me on July 1, 2009, and was scheduled for hearing on October 22, 2009. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke

Applicant's security clearance. At the hearing, the Government's case consisted of six exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on October 29, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) accumulated 17 debts exceeding \$14,000 and (b) petitioned for Chapter 7 bankruptcy in October 2003 (discharged in January 2004).

Under Guideline E, Applicant is alleged to have falsified his Electronic Questionnaire for Investigations Processing (e-QIP) by omitting his debts over 180 days delinquent, and currently 90 days delinquent.

In his response to the SOR, Applicant admitted each of the alleged debts and omissions in his e-QIP. He claimed he paid the creditor identified in ¶ 1.a. He claimed he attempted a settlement with one of his creditors (creditor 1.b) and was paying on several more: creditors 1.d through 1.g, 1.k, 1.m, and 1.n. He explained that the debts identified in ¶ 1.h and 1.p are duplications of ¶ 1.g. and 1.b, respectively. And he claimed he was not able to complete repayment agreements with creditors 1.i, 1.j, and 1.o.

Findings of Fact

Applicant is a 52-year-old systems maintenance engineer 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 married his first spouse in February 1986, and divorced her ten years later in August 1996 (ex. 1). He has no children from this marriage. Applicant currently shares a residence with a girlfriend (Tr. 28-29).

For most of the 1980s and 1990s, Applicant worked for defense contractors and had a security clearance. Between 2001 and 2007, he experienced two major layoffs (2001-2003 and 2006-2007) that affected his ability to pay his debts (Tr. 23, 25-27). During these lengthy layoffs, he received unemployment compensation, but no severance packages from his employers (Tr. 28).

Unable to fashion a plan to repay his debts, Applicant petitioned for Chapter 7 bankruptcy relief in October 2003. In his Chapter 7 petition, he scheduled approximately \$41,000 in unsecured claims (see ex .1; Tr. 29). His unsecured claims included a number of credit card debts stemming from charges he accumulated while unemployed between 2001 and 2003 (Tr. 30).

Applicant has never received any financial counseling (save for the occasional informal counseling he received at work) and has no current plan to repay the delinquent debts he accrued since his 2004 Chapter 7 discharge. Currently, he pays \$120 a month to a debt consolidation company to cover several of his debts, but provides no documentation of the debts being addressed (Tr. 54).

Applicant assures that he does not have sufficient income to address all of his delinquent debts and is actively looking for a higher paying job (Tr. 32-33). To date, Applicant has provided no documentation of any contacts with his listed creditors, and has no tangible plan to address his debts (Tr. 51). He claims to have paid on several of his listed creditors (creditors 1.d, 1.m, and creditor 1.n), but provided no documentary proof (Tr. 36-508).

Applicant nets about \$2,000 a month from his work and struggles every month just to meet his expenses (Tr. 51). He estimates his monthly expenses to exceed \$1,500 (Tr. 52-54). He has no 401(k) retirement program, life insurance, or other assets (Tr. 55). Nor does he have any alimony or child support obligations. He could provide no estimate of when he could begin paying down his accumulated delinquent debts.

Asked to complete an e-QIP in February 2008, Applicant omitted his accrued debts that were over 180 days delinquent when answering question 28. He also omitted his debts that were then over 90 days delinquent (see ex. 1; Tr. 60-61). He provided no explanations for his answers either when afforded an opportunity to do so in section 30 of the e-QIP (see ex. 1).

Applicant admitted to recognizing the debt question, and his need to answer in the affirmative to the question, but skipped the question and never returned to the debt question (Tr. 60-62). Applicant attributed his omissions to haste and oversight (Tr. 61-63). He indicated he believed he completed the e-QIP section covering financial information, only to discover later that he had not (Tr. 63-64).

In July 2008, an investigator from the Office of Personnel Management (OPM) interviewed Applicant. In opening the interview for discussion of Applicant's delinquent debts, the investigator showed Applicant a credit report and proceeded to go over each of the debts listed in the report with Applicant. He acknowledged the listed debts as his own when asked about them by the investigator. Conversely, he answered "no" to those reported debts he did not recognize (see ex. 1; Tr. 65). He admitted to recognizing the debt questions, and his need to answer in the affirmative to the questions, but skipped the question and never returned to the debt question (Tr. 65-66).

Applicant's explanations for his debt omissions are plausible, but not entirely compatible with his educational and work skills. His hesitation in affirmatively acknowledging his delinquent debts is better explained by his inferred natural reluctance to supply negative information about his finances. Without more to corroborate his explanations, his answers are not sufficient to avert drawn inferences of knowing and wilful omission.

When interviewed by an OPM investigator five months later, Applicant's acknowledged the omitted debts only after being confronted by the agent with a credit report (see exs. 2-6; Tr. 66-68). His answers, while truthful when made, were neither prompt nor voluntarily provided the OPM investigator as those term are generally understood to mean.

Applicant did not provide any endorsements or performance evaluations. These might have been helpful to demonstrating his overall reliability and trustworthiness. As it is, not enough is known about Applicant to credit him with any supporting character and work-related job assessments.

Policies

The AGs list guidelines to be considered by 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 all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in 2(a) of the 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 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 chances; (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 individual guidelines 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.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the revised AGs, 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 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. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). 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 materiality showing, 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. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-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 respected employee of a defense contractor who accumulated delinquent debts during recurrent periods of unemployment and work in low-paying jobs. Since his Chapter 7 bankruptcy discharge in 2004, he has incurred additional debt delinquencies, which he has yet to address. Claiming he made payments on some of his listed accounts through an identified debt consolidation firm, he provided no documentation of any debt payments or contacts with any of his creditors.

When asked about his omissions of his listed delinquent debts in the e-QIP he executed in 2008, Applicant knowingly and willfully omitted his listed debts. Applicant’s unaddressed delinquent debts and e-QIP omissions raise security concerns under Guidelines F and E, respectively.

Applicant’s finances

Applicant’s pleading admissions of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (3d ed. 1984)). Each of his listed debts are fully documented in his latest credit reports and provide ample independent proof of his debts. Applicant’s accumulation of delinquent debts and his past inability to pay, or otherwise address these debts in a systematic fashion, 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.”

With his limited repayment history and lack of a tangible plan to resolve his listed debts without higher paying work, Applicant cannot be credited with any visible progress to date in regaining control of his finances. To date, he has made no documented payments to any of the creditors listed in the SOR, and faces potential collection action on some of them.

Based on his evidentiary showing of recurrent unemployment and underemployment conditions, 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.

However, Applicant has failed to demonstrate he has addressed his most recent delinquent accounts in any manifest way, and, as a result, cannot fully invoke any of the mitigating benefits of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” and 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.”

Because of his recurrent periods of unemployment, Applicant’s inability to make any major inroads in resolving his delinquent debts is somewhat understandable. Full mitigation credit is not available to him, however, based on the facts of this case. Neither Applicant’s oral nor written evidence reflect any significant voluntary repayment efforts on any of his incurred delinquent debts since his emergence from a Chapter 7 bankruptcy discharge in 2004. His repayment promises lack any tangible repayment plan and appear to be wholly contingent on his obtaining work that pays him more than what he is currently earning with his present employer. His efforts to date are not enough to warrant full application of any of the mitigating conditions covered in the financial guideline.

Moreover, even if Applicant’s debt delinquencies did arise due to circumstances outside of his control, he could have been reasonably expected to have exerted more responsible efforts in addressing his debts once the conditions that contributed to the delinquencies had passed or eased and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he has failed to address them in any material way.

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 imposes important duties 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 an applicant to make more 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.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his failure to address his delinquent debts in any tangible fashion to date. While unemployment and low-paying work might have played a considerable role in Applicant's accumulation of so many debts over an extended period (to include both his pre-bankruptcy and post-bankruptcy employment circumstances), Applicant failed to provide any explanatory material for consideration. Endorsements and performance evaluations might have been helpful in making a whole-person assessment of his overall clearance eligibility, but were not provided.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts. Taking into account Applicant's lack of any documented explanations for his debt accruals and his failure to provide any proof of corrective actions taken to address his old debts, it is still soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance.

Applicant's e-QIP omissions

Posing potential security concerns, too, are Applicant's omitted debts over 180 days delinquent and currently 90 days delinquent, respectively, in the e-QIP he completed in 2008. He denied any intent to falsify his answers but failed to credibly demonstrate why he answered "no" to the pertinent question 28 without providing any explanations in the comments section covered by section 30 of the questionnaire. His lack of credible explanations why he failed to list or discuss his delinquent debts, either in direct response to question 28 or in the comments section of the questionnaire precludes him from refuting the allegations in issue.

While Applicant insists he promptly and voluntarily disclosed all of his debts when asked about them in a subsequent official OPM interview five months later, he acknowledged his delinquencies only after being shown a credit report by the investigating agent. Under the circumstances, his explanations cannot be considered voluntary. Applicant's answers are not sufficiently voluntary to enable him to invoke MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Applicant's corrections, while manifestly forthcoming and sincere, do not meet either the prompt or good-faith prongs of MC ¶ 17(a), as these terms are generally understood.

From a whole person perspective, Applicant appears to be an essentially honest applicant with too little information from responsible individuals at work and in his community who are familiar with his work and community efforts to formulate any countervailing positive impressions about his reliability and trustworthiness.

In evaluating all of the circumstances surrounding Applicant’s e-QIP omissions, his ensuing clarifying answers to an OPM investigator, and his appearance explanations, his omission explanations and ensuing corrections are insufficient to enable him to convincingly refute or mitigate the deliberate falsification allegations. The partial candor he displayed in explaining his debts to the OPM interviewer who first showed him his credit report cannot be considered prompt good-faith corrections under all of the circumstances accounted for.

Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations constitute core policy concerns of the personal conduct guideline (AG ¶15). The basis for these concerns is clearly evident under the facts and policy considerations developed under this guideline. Considering all of the evidence produced in this record, unfavorable conclusions warrant with respect to the allegations covered by subparagraph 2.a of Guideline E.

In reaching my 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): AGAINST APPLICANT

Subparas 1.a through 1.r: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subpara 2.a : 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

