



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 08-10170

**Appearances**

For Government: Nichole L. Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

April 11, 2011

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate the security concerns regarding his use of information technology systems and his personal conduct. Eligibility for access to classified information is denied.

**Statement of Case**

On April 23, 2010, 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 Adjudicative Guidelines (AGs), implemented by the Department of Defense for SORs on September 1, 2006.

Applicant responded to the SOR, undated, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on January 24, 2011, and submitted additional information for consideration in February 2011, within the 30 days permitted. Applicant's submissions were identified as AE's A through C and admitted. The case was assigned to me on February 28, 2011.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated nine delinquent debts exceeding \$54,000. The alleged debts are listed as follows: creditor 1.a (\$3,986); creditor 1.b (\$10,032); creditor 1.c (\$4,200); creditor 1.d (\$4,512); creditor 1.e (\$5,850); creditor 1.f (\$14,333); creditor 1.g (\$2,452); creditor 1.h (\$6,148); and creditor 1.i (\$3,204).

In his response to the SOR, Applicant denied all of the listed debts with explanations. He claimed certain of his accounts had been closed in the past without identifying any of the creditors. He also claimed that most of the accounts were joint accounts that were in dispute with his ex-wife. And he claimed that a new credit report will reflect that he is actively paying all of the accounts one by one. Applicant attached a January 14, 2010 letter from a credit collection agency that does not appear to match any of the creditors or accounts covered in the SOR.

### **Findings of Fact**

Applicant is a 46-year-old defense market manager for a defense contractor who seeks a security clearance. Applicant enlisted in the Air Force (USAF) in February 1984 and served 20 years of active duty. (Item 1) While on active duty with the USAF, he held a security clearance. He received his honorable discharge in March 2004.

Applicant married his spouse in December 1993 and divorced her in August 2006. (Item 1) He has two children (ages 23 and 25) from this marriage. (Item 1)

During their marriage, Applicant and his wife accumulated many debts: some of them joint and some of them accrued from individual accounts. In August 2006, Applicant's divorce from his wife was finalized. (Items 1 and 5) Since their final decree was entered, they have waged disputes over who should be principally accountable for the joint bills. Each of the debts listed in the SOR represent accounts opened individually by Applicant and, as such, debts that belong solely to Applicant.

Credit reports show nine delinquent debts in Applicant's name that have since been charged off and not otherwise paid or resolved. Altogether, there are nine such debts listed in the SOR that total in excess of \$54,000. See Items 6 through 8. Of these listed debts, Applicant is credited with resolving just two: creditors 1.d and 1.h. (Items 6 through 8) While Applicant claims to have paid off most of the listed debts, his furnished documentation does not corroborate his claims.

## **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 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 individual guidelines are pertinent in this case:

### **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**

By virtue of the principles and policies framed by the 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, the judge must consider and weigh the 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 or her 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 defense market manager of a defense contractor who accumulated a number of delinquent debts during an extended period of marital estrangement and contentious divorce proceedings. He denied being delinquent on any of the accounts listed in the SOR and claimed he paid off most of his accrued debts and is committed to paying off the remaining ones.

Each of Applicant's listed debts are documented in the produced credit reports and reflect debts opened individually by Applicant and provide corroboration of his debts. His accumulation of delinquent debts and his past inability and unwillingness to address all but two of them (creditors 1.d and 1.h) 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.”

Moreover, some judgment problems persist over Applicant’s unexplained individual delinquencies and his failure to demonstrate he acted responsibly in the past in addressing these listed debts that he never claimed to belong to his ex-wife. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are most of his listed debt delinquencies still outstanding, but he has failed to address them in any tangible way that can be verified in the developed record.

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). Failure of the applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about whether he has demonstrated the trust and judgment necessary to safeguard classified information.

Applicant’s debts are attributable in part to his contentious separation and divorce proceedings which deprived him of the joint spousal income he historically relied on to satisfy his marital and individual bills. All but two of the listed debts in the SOR are either unpaid or unresolved. In his most recent correspondence, he pledged to pay off his listed debts, one at a time. (Item 2 and AE A-C)

Based on the evidence, some extenuating circumstances are associated with Applicant’s inability to pay off or otherwise resolve his debts. Available to Applicant in part is MC ¶ 20(b), “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.” But this mitigating condition has only partial application to Applicant’s circumstances. For Applicant has been fully employed for the past two and one-half years, and by all written accounts, he has been fully able to address his individual debts and document his progress.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts and failure to address all of them responsibly with the resources at his disposal during the two plus years he has been gainfully employed by his current employer.

While ongoing divorce proceedings and the absence of spousal cooperation in addressing his debts might have played a considerable role in his accumulation of his debt delinquencies, his continuing failure to take more documented steps to pay or otherwise resolve his individual delinquent debts remains a continuing source of security concern. Supervisory endorsements and performance evaluations might have been helpful, too, 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 all of the documented facts and circumstances surrounding Applicant's debt accumulations and his lack of any acceptable explanations for his declinations to address his remaining delinquent debts after his wife declined to help him, 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 the minimum requirements for holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.c, 1.d through 1.g, and 1.i. Favorable conclusions are warranted with respect to subparagraphs 1.d and 1.h.

### **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**

Subparagraphs 1.a-1.c, 1.e-1.g, and 1.i	Against Applicant
Subparagraphs 1.d and 1.h:	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.

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Roger C. Wesley  
Administrative Judge

