



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



In the matter of:)
)
-----) ISCR Case No. 08-10517
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O. O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

June 30, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On February 10, 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 to the SOR on March 16, 2009, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on April 28, 2009, and timely responded with documented letters to his creditors, employment information and performance evaluations. The case was assigned to me on June 3, 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 November 2001, which was dismissed in September 2002, (b) had a federal tax lien assessed against him in October 2007 in the amount of \$8,237.00, and ©) accumulated 11 delinquent debts exceeding \$13,000.00.

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

Findings of Fact

Applicant is a 46-year-old lab technician 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 May 1987. He divorced in September 1991 (see ex. 5). He has one child from this marriage (see ex. 20).

Applicant petitioned for Chapter 13 bankruptcy relief in November 2001. Credit reports reveal that his Chapter 13 petition was dismissed in September 2002. Reasons for the dismissal are not reported.

Records show that the Internal Revenue Service Additionally filed a federal tax lien against him in 1997 for \$8,237.00 in reported delinquent taxes. The circumstances that necessitated this lien are not covered in the presented evidence. Between 2001 and 2002, Applicant accumulated a number of debts that are reported to be delinquent in his July 2008 credit report (see ex. 8). His consumer debts total 10 in number and exceed \$4,000.00 in amount. Applicant attributes these accrued consumer debts to a period of unemployment between April 2001 and April 2002, after his employer ceased doing business. He has since returned to work and provides information covering his current employment. Applicant provides copies of letters he recently sent to most of his creditors acknowledging his debts and asking for approval of his offers to begin making \$25.00 monthly payments on each of his debts.

Applicant does nor provide any letter responses to his individual requests, or furnish any alternative payment plans should any or all of his creditors decline his offers. Nor does he provide any explanations or evidence of corrective steps he has taken to resolve his outstanding federal tax lien.

Applicant provided an endorsement from his supervisor commending him on his successful completion of his 180-day probationary period and welcoming him as a regular employee. Applicant received solid performance evaluations from his supervisor who credited Applicant with exceeding his expectations and demonstrating outstanding

technical and supervisor skills during the 2008 rating period. Applicant did not include any updated 2009 performance evaluations or evidence of community contributions in his response materials.

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 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 lab technician for a defense contractor who petitioned for Chapter 13 bankruptcy (dismissed) and accumulated a number of delinquent debts (to include an unsatisfied federal tax lien). Most of these debts date to a period between 2001 and 2002 when Applicant was unemployed.

Applicant's finances

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©) "a history of not meeting financial obligations."

Many of Applicant's debts were accumulated during a period of extended unemployment between 2001 and 2002, and were covered in his dismissed Chapter 13 petition in 2002. Less is known about the filed tax lien in 1997, or what steps Applicant took to address this lien or his other debts after he returned to work in April 2002. Without more information about his past efforts in addressing his debts and plans to resolve his listed debts, Applicant cannot be credited with any manifest 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 should

any of all of his creditors decline his recent payment offers. Applicant's finances still require a good deal of effort on his part to fully stabilize them.

Based on his furnished explanations regarding his loss of employment,, Applicant may take some 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 responsibility." The lack of more documentation of the specific circumstances surrounding his accumulated debts precludes him from fully utilizing MC ¶ 20(b) to his benefit.

Mitigation credit is not available to Applicant under any of the other mitigating conditions based on the evidence developed in this administrative record. While he able document recent requests to his consumer creditors to approve modest \$25.00 a month payments, he provides no creditor responses or alternative plans should any of all of the creditors decline to work with him. And he provides no evidence of any efforts to address his still outstanding federal tax lien.

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 his credit, he demonstrates good progress with his recent employer and shows interest in resolving his debts.

To date, though, Applicant has not shown sufficient efforts to resolve his outstanding debts to overcome security concerns about the state of his finances. His work recent contributions and solid performance evaluations are encouraging and demonstrate his responsibility in the work place. But these efforts, while important, are not enough to surmount continuing security concerns about 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 federal tax lien, repay 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.i.

In reaching my decision, I have considered the evidence as a whole, including each of the E2(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.i:

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