



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-11137

**Appearances**

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

October 30, 2009

**Decision**

WESLEY, Roger C., Administrative Judge:

**History of Case**

On May 29, 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 June 25, 2009, and requested a hearing. The case was assigned to me on July 15, 2009, and was scheduled for hearing on August 19, 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 seven exhibits; Applicant relied on two witnesses (including himself) and four exhibits. The transcript (Tr.) was received on August 27, 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, the Government alleges in the SOR that Applicant (a) accumulated three debts exceeding \$2,000 and (b) incurred a federal tax lien for \$84,402 in unpaid federal taxes.

In his response to the SOR, Applicant admitted each of the alleged debts. He claimed to be making payments on the debts alleged.

### **Findings of Fact**

Applicant is a 38-year-old waste management technician and driver 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 is married, but currently separated from his spouse (see ex. 1; Tr. 39). He has no children from his marriage.

Applicant experienced recurrent periods of unemployment between October 2001 and March 2007 (Tr. 25-29). Some of his layoffs were attributable to job-related injuries that affected his work. Others were due to the terminations of his employers' work contracts (Tr. 22-24). During these layoffs, he struggled to pay his bills and manage his finances.

When Applicant was about 14 years of age (sometime in 1985), he received \$1.1 million from a trust fund established by his grandmother (Tr. 30-33). With some of the trust funds, Applicant bought a mobile home in 1995 (Tr. 32). He repaid all of his existing debts at the time with other funds he received from the trust. And with the balance of his trust funds, he made large gifts to various family members in need.

Because of his employment conditions, Applicant encountered difficulties paying his utilities and making his monthly home loan and motorcycle payments (Tr. 22-23, 30). When he could not make his loan payments on his mobile home, his landlord smashed the unit with a bulldozer and destroyed the unit (Tr. 32-33).

Applicant's inherited trust fund contained mostly stocks and other securities. Applicant sold penny stocks from the trust to purchase his home (sometime in 1995) and assist his family members (Tr. 31-32). Because he incurred taxable gains on his stock

sales, he incurred tax liabilities (Tr. 31). The IRS initially assessed \$86,000 in taxes, interest and penalties on his gains (Tr. 31).

Beginning in May 2009, Applicant initiated \$25 monthly payments to the IRS (Tr. 33-35). He made two payments to the IRS in May and July 2009, respectively (see ex. A; Tr. 35). Not satisfied with his minimal monthly payments, the IRS asked him for a detailed accounting of his monthly expenses in August 2009 (Tr. 35). Applicant responded by making a \$50 payment to the IRS on the date of the hearing (Tr. 35-36). In the coming week (*i.e.*, the week of August 24, 2009), the IRS scheduled the commencement of garnishment action on Applicant's wages (Tr. 36). Under the terms of the IRS garnishment letter, the IRS will take \$2,000 a month out of Applicant's wages, leaving him with just \$800 a month to live on (Tr. 67-68). Without identifying the tax years, the garnishment letter confirmed that Applicant owed \$100,000 in back federal taxes, interest, and penalties (Tr. 69). He has no tax advocate or tax professional to assist him with his taxes.

To date, Applicant has made just three payments (totaling \$100) towards satisfying his tax debt (see ex. A; Tr. 35-36, 54-55, 58). He has received no tax or other financial counseling and has no viable employment options to supplement his income and address his other debts (Tr. 46, 68).

Besides his tax delinquencies, Applicant accrued three smaller delinquent debts: a utility debt (creditor 1.a), a veterinarian bill (creditor 1.b), and an ambulance bill (creditor 1.c). Two of these debts (creditors 1.a and 1.c) were purchased by the same collection firm and have been consolidated into one monthly payment of \$50.00 (see ex. C). To date, Applicant documents two payments to creditors 1.a and 1.c in the respective amounts of \$50 each (see exs. B through D; Tr. 52-53, 59-60). Applicant has not provided any documented payments to his remaining creditor (creditor 1.b), despite his stated commitment to satisfy this disputed debt (Tr. 22-23).

Applicant nets approximately \$2,000 a month (Tr. 39). His monthly expenses include his rent (\$250), utilities (\$75 to \$100), cell phone (\$125), car payments (\$200), car insurance (\$25), and gas for his truck (\$100 to \$150). He currently has no health insurance or medical expenses; his medical bills are all covered by his employer (Tr. 41). He has no bank account or 401(k) retirement account (Tr. 44, 47). His spouse contributes nothing to his monthly expenses. By contrast, he has provided material financial support to her, albeit nothing since January 2009 (Tr. 39-41).

In 2007 Applicant was involved in an employment-related accident (Tr. 45-46). He incurred medical bills in connection with the accident that his employer covered, except for the ambulance bill identified in the SOR (Tr. 46).

Applicant has encouraging endorsements from members of his employer group. His direct supervisor has known him since 1997 and describes his life as a "little scattered" (Tr. 63). She credited him with making earnest efforts to reconcile his tax problems with the IRS (Tr. 63). She described Applicant as a very important asset to

their company, which is located in a very small rural town that has limited labor resources (Tr. 70).

## **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 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 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.

### **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 associated with (a) his making trust distributions to his family members from a trust created by his grandmother without making provision for corresponding tax payments to the IRS and (b) his experiencing recurrent periods unemployment without any retained monetary resources to cover his debts during periods of financial stress.

Applicant's pleading admissions of the debts covered in the SOR (sometimes referred to as judicial admissions) 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 and his immediate supervisor each confirmed the IRS's latest enforcement demands and garnishment intentions. 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 DC ¶19(c) "a history of not meeting financial obligations."

Without any documented payment history or tangible plan to resolve his major tax debt, Applicant cannot be credited with any more than minimal progress to date in regaining control of his finances and provides no hard assurances of any commitment to resolve his IRS debt (by far the largest of his four accumulated debts). To date, he has made just three small payments on his federal tax lien, and faces almost certain garnishment in the very near future.

Applicant has made some tangible progress on two of his smaller debts: his utility and ambulance debts. He documented payments to creditors 1.a and 1.c in the aggregate amount of \$100, and can be expected to fulfill his commitments to discharge these two small debts in the foreseeable future. However, he has not made any headway in addressing his veterinarian bill to date.

Applicant's progress to date in regaining control of his finances is encouraging, but is still a considerable work in progress that is only recently being addressed. He still is working on addressing his major IRS debt and finalizing repayment efforts with his three other creditors. At this time, he can provide no predicable estimates as to when he will be able to make any significant headway on his IRS debt and satisfy his smaller debts.

Based on his evidentiary showing, 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.

Applicant's repayment efforts with creditors 1.a, and 1.c entitle him to some mitigation credit under both 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." Both of these mitigating conditions have partial application to Applicant's situation, given his tight financial circumstances.

Full mitigation credit is not available to Applicant, however, based on the facts of this case. Neither Applicant's oral nor written evidence reflect any significant voluntary repayment efforts on his major tax debt and one of his smaller debts. His payment receipts do reflect some modest repayment efforts in recent months. These efforts, although very limited, are encouraging. They are not enough, though, at this time 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 the applicant to make 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 accumulation of delinquent debts. His positive endorsement from his management team merit considerable praise and commendation. In balance, though, he has not shown enough tangible effort in addressing his tax and veterinarian accounts to mitigate his still delinquent debts and credit him with restored control over his finances.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to address them, and the modest steps he has mounted to address his old debts, it is still too soon to make safe predictive judgments about Applicant's ability to repay his largest 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.b and 1.d. His demonstrated repayment efforts are sufficient to mitigate the allegations contained in subparagraphs 1.a and 1.c.

In reaching my recommended 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**

Sub-paras: 1.b and 1.d:	Against Applicant
Sub-paras. 1.a and 1.c:	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