



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



In the matter of:)
)
-----) ISCR Case No. 08-11216
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 19, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On April 17, 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 12, 2009, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on June 2, 2009, and did not respond with any information. The case was assigned to me on July 31, 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 accumulated 19 delinquent debts exceeding \$26,000. They are comprised of delinquent consumer accounts, medical debts, and deficiency debts associated with two vehicle repossessions.

In his response to the SOR, Applicant admitted each of the allegations. He provided no explanations for his admitted debts.

Findings of Fact

Applicant is a 26-year-old production support 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 February 2005 and has two children from his marriage, ages four and three (ex. 4). Records document that he divorced his wife October 2007 (ex. 4). Applicant was awarded a high school diploma in 2001 (see ex. 4).

Since 2001, Applicant has accumulated a number of delinquent debts. His listed delinquencies appear in virtually all of his credit reports documented in the record (see exs. 6 and 8). His listed debts include three repossessed vehicles: two in 2003 and another in 2005 (ex. 6).

Based on the information contained in his January 2008 credit report, Applicant purchased a vehicle in July 2002 for \$23,443 under an installment agreement he arranged with the seller (see ex. 6). He defaulted in his agreement in December 2002, and he surrendered the vehicle to the creditor in January 2003 (ex. 6). Sale of the vehicle produced an \$8,822 deficiency balance, which the creditor charged off in April 2005. The deficiency from this repossession is not reflected in the SOR.

Applicant surrendered another vehicle in December 2003 (see ex. 6). According to his January 2008 credit report, he purchased a vehicle in September 2002 from creditor 1.d for approximately \$7,213 (see ex. 6). His credit report shows he defaulted in his monthly car payments sometime in 2003. Following his voluntary surrender of the vehicle to the creditor in December 2003, creditor 1.d charged off a debt balance of \$5,144 in February 2004 (ex. 6). Whether the seller was able to recover any proceeds from a public sale is unclear. Applicant's most recent credit report lists a delinquency balance of \$6,787 with creditor 1.d (see ex. 7). Without any information from Applicant to challenge the amount of the reported deficiency by this creditor, inferences warrant that Applicant remains indebted to creditor 1.d for the stated amount (\$6,787) in his latest credit report (ex. 7).

In 2005, a third creditor (creditor 1. r) repossessed a vehicle from Applicant. Applicant's January 2008 credit report indicates he purchased the vehicle in February 2004 for \$7,021 from creditor 1.r, and defaulted in January 2005, or thereabouts.

Records show that creditor 1.r repossessed Applicant's vehicle in January 2005 (see exs. 6 and 7). Although, it is not clear whether the vehicle ever produced any proceeds from a public sale, Applicant does not dispute the deficiency owing following the repossession, and offered no documented proof of any sale credits or satisfaction of any owed deficiency to the creditor on this account. Inferences warrant, accordingly, that Applicant remains indebted to creditor 1.r for the full amount of the charged off loan balance.

Besides his major debts associated with his vehicle deficiencies, Applicant incurred a number of other debts: some medically-related and others consumer-based. These remaining debts number 17 and exceed \$12,000 in aggregate indebtedness. How Applicant came to be indebted to these listed creditors and delinquent in his payments is unclear. Applicant provided no documentation of the origins of these debts, his payment history, or how he became delinquent. All that can be gleaned from the exhibits is that Applicant accrued the debts listed in the SOR and documented in the accompanying credit reports and ceased paying on them between 2002 and 2005 (see exs. 6 and 7).

Afforded an opportunity to supplement the FORM, Applicant declined to do so. He provided no endorsements or performance evaluations in his behalf. Nor did he provide any proofs of community and civic contributions.

Policies

The revised AGs (effective September 2006) 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 revised 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.

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 an employee of a defense contractor who accumulated a number of delinquent debts (several are related to vehicle repossessions) between 2002 and 2005. His 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 ¶19(c) “a history of not meeting financial obligations.”

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 Applicant’s listed debts are fully documented in his latest credit reports and provide ample independent proof of his debts.

Applicant’s debts are both unexplained and unresolved. To date, he has not manifested any efforts to address these debts, despite extended opportunities to supplement the FORM materials furnished him.

Without any documented payment history or tangible plan to resolve the listed debts, Applicant cannot be credited with any manifest progress to date in regaining control of his finances and 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.

Based on the documented materials in the FORM, Applicant has not demonstrated any extenuating circumstances associated with the delinquent debts he accrued over several years. Consequently, 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,” is not available to him. Some judgment problems persist, too, over the delinquencies he has failed to explain or address.

Moreover, even if Applicant’s debt delinquencies did arise due to circumstances outside of his control, he could have been reasonably expected to address his debts in a responsible way 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 visible way.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. See *Snepp v. United States*, 444 U.S. 507, 511n.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 (or her) 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 (some quite large). Since graduating from high school in 2001, he has not shown any manifest effort in addressing any of his covered debts to mitigate his still delinquent accounts. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

While youth, immaturity, and the strains of managing a family household might have played a considerable role in his accumulation of so many debts over a relatively short period, Applicant failed to provide any explanatory material for consideration. 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 enable him to overcome appraised security concerns arising out his accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his youth and family commitments, his lack of any exhibited 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 his holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.s.

In reaching my decision, I have considered the evidence as a whole, including each of the 2(a) factors enumerated in the revised AGs.

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 (FINANCES):

AGAINST APPLICANT

Sub-paras. 1.a through 1.s:

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

