



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11824
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

March 24, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On July 10, 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 July 27, 2009, and requested a hearing. The case was assigned to me on September 1, 2009, and was scheduled for hearing on October 6, 2009. A hearing was held as scheduled. At the hearing, the government's case consisted of six exhibits (ex. 1-6). Applicant relied on one witness (himself) and no

exhibits. DOHA received the transcript (Tr.) on November 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to supplement the record with his documented annulment papers, verification of accounts belonging to his ex-wife, his arrangements with his account monitor, and character references. For good cause shown, Applicant was granted seven days to supplement the record.

Within the time permitted, Applicant submitted the following documentary exhibits: a cover letter detailing the status of his listed accounts; inquiry letters covering two of his creditors (not identified), a billing and settlement offer from an unlisted creditor, a receipt of payment in full from creditor 1.j, and a documented request for records from the divorce court that houses Applicant's divorce records. His post-hearing exhibits were admitted as exhibits A through E.

Applicant submitted additional documentation for consideration: a cover letter and copies of papers included in his ex-spouse's divorce petition. His submission included an expense declaration from Applicant and his ex-wife's income and expense declaration (which includes the creditor 1.e debt). This post-hearing exhibit was submitted out of time, but without any objection from Department Counsel, and for good cause, was admitted as exhibit F.

In another post-hearing submission, Applicant submitted a cover letter and account statements from creditors 1.h and 1.i covering their delinquent accounts with Applicant. Like exhibit F, this submission was filed out of time, and for good cause, was admitted as exhibits G through I.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated fourteen delinquent debts that exceed \$20,000 in the aggregate. The debts are listed as follows: ¶ 1.a (\$760), ¶ 1.b (\$13,481), ¶ 1.c (\$955), ¶ 1.d (\$765), ¶ 1.e (\$1,071), ¶ 1.f (\$305), ¶ 1.g (\$581), ¶ 1.h (\$68), ¶ 1.i (\$2,270), ¶ 1.j (\$210), ¶ 1.k (\$865), ¶ 1.l (\$927), ¶ 1.m (\$13,481), and ¶ 1.n (\$1,120).

In his answer to the SOR, Applicant admitted most of the allegations in the SOR. He denied five of the allegations (¶¶ 1.d, 1.g, 1.k, 1.l, and 1.n), and claimed these debts belong to his ex-wife. He explained that he has not taken his credit seriously in the past, and is now taking an active role in cleaning up his old accounts. He claimed one of the accounts is paid off (¶ 1.m) and is working on resolving the remaining accounts.

Findings of Fact

Applicant is a 50-year-old heavy-duty truck 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.

Between May 1997 and August 2005, Applicant served in the active reserves of the U.S. Army (see ex. 1). He re-enlisted in the Army reserves in 2005, but encountered difficulties in processing (see ex. 2). Unable to inprocess, for reasons unknown to him at the time, he returned home. Three years later (around March 2007), he was informed by local police that the U.S. Army was looking for him (ex. 2). Pending arrival of his military orders, he was taken into custody. When he arrived at the designated military facility he was inprocessed and taken before a military judge to explain his situation. Once he explained the circumstances of his absence, he was granted an honorable discharge from the Army and released (see ex. 2).

Applicant married his first wife in March 1980 (ex. 1) at the age of 21, and has two adult children from this marriage (Tr. 22). Both he and his wife were young and irresponsible at the time and incurred a considerable amount of credit-related debt (see ex. 2). In both his security clearance application (e-QIP) and his interrogatory answers, he reported that he divorced her around September 1999 (see exs. 1 and 2). However, in his hearing testimony, he claimed his marriage to his first wife was annulled (Tr. 43-44).

Afforded an opportunity to document his annulment, Applicant provided excerpts of an apparently ongoing divorce proceeding (see ex. B). His divorce papers include a declaration from his estranged wife that they separated in February 2002 and were involved in a pending divorce proceeding (see ex. G). In a summary of his interview with an agent from the Office of Personnel Management (OPM) in May 2008, he told the agent only that he was previously married to his first wife; he omitted all of the details of his separation and ensuing legal proceedings (see ex. 2). Based on the information he has provided to date, the dates and circumstances surrounding the dissolution of his first marriage are unclear.

Between 1992 and 2000, Applicant and his first wife accumulated a number of delinquent debts. Applicant cited several reasons for his debts: insufficient withheld income to cover his income taxes; unemployment (during parts of 2003, 2004, and 2005), forced assumption of some of the debts belonging to his ex-wife (ex. 2). He experienced additional setbacks after his current wife was laid off from her job in the latter part of 2007 (ex. 2). While Applicant did not recognize some of the accounts in the SOR (Tr. 60-63), he has never formally challenged any of the listed debts in the SOR. All of these listed debts are covered in Applicant's credit reports and heretofore have not been formally challenged by Applicant (see exs. 3 through 6).

Applicant married his second wife sometime in November 2002 (see ex. 1). They have no children from their marriage (see ex. 1).

Applicant's largest reported debt is a loan balance of \$13,481 on a vehicle he purchased jointly with his second wife in June 2002. His credit report lists a purchase price of \$27,256 and scheduled monthly payments of \$517 on the installment loan balance (see exs. 3 and 4). Applicant and his wife never received a bill for the vehicle and returned it after two or three months to the seller (Tr. 39). Upon their return of the vehicle, the seller told them that the financing fell through (Tr. 39). The seller, in turn, informed Applicant and his wife that they would place the lost sale in Applicant's credit report and treat it as a default (Tr. 40). The last reported loan balance on this returned vehicle when the account was charged off in August 2002 was \$13,481 (see ex. 4). Whether this sum represents the deficiency balance on the original loan after according credit for proceeds from the seller's sale of the vehicle is not known.

When his current spouse began receiving her U.S. pension benefits in March 2008, Applicant looked forward to having additional funds to pay on his old debts. He assured the OPM investigator who interviewed him in May 2008 that he would be able to begin addressing the debts he could identify as his own (see ex. 2). Besides his listed debts in the SOR, Applicant has two outstanding tax liens he is currently addressing: one with the IRS for around \$5,000 and others with his state of residence (Tr. .

To date, Applicant has paid less than \$300 (including his payoffs of creditors 1.j and 1.m, and his partial payment on his creditor 1.h account) that he documents (see exs. C, D, F, and J). He provided no proof of repayment plans completed with any of his other listed creditors, and no concrete plans to address any of his remaining creditors listed in the SOR.

In the personal financial statement he completed in January 2009, Applicant reported net monthly income for his wife and himself of \$6,235, and net monthly expenses of \$3,965 (see ex. 2). His listed personal debts exceeded \$13,000 (of which \$11,000 is owed to the IRS), and monthly payments on these debts of \$476 (see ex. 2). Applicant listed a monthly remainder of \$1,793 and no additional allocated monies to his listed creditors in the SOR. He did not provide any updated financial statement or evidence of financial counseling.

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 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 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 adjudication policy concerns 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

Under the Directive, a decision to grant or continue an Applicant's request for 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. 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 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 proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-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 licensed truck driver for a defense contractor who accumulated delinquent debts during periods of unemployment and difficulties with some of his tax obligations. While he has addressed his tax obligations (not covered in the SOR), and paid several of his smaller debts, he has not been able to make any headway with his remaining balances. His still outstanding delinquent debts raise continuing security concerns over the stability of his finances.

Applicant's pleading admissions of the debts covered in the SOR (sometimes referred to as official admissions) negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). All 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 warrant the application of two of the disqualifying conditions (DC) of the financial consideration guideline: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶ 19(c) "a history of not meeting financial obligations."

With his limited payment history on his listed debts, and inability to address most of his debts, either before the hearing or within the extended time afforded him after the hearing to contact his creditors and obtain documentation of his claimed marriage annulment from his first wife, Applicant can not be credited with any more than modest progress to date in regaining control of his finances. Based on his limited repayment record to date (a little more than \$300 on a debt aggregate in excess of \$20,000) he can provide no reliable assurances of any sustainable commitments to resolve his outstanding debts with the income sources currently available to him.

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 partial application to Applicant's circumstances.

Applicant's repayment efforts with creditors 1.h, 1.j, and 1.m entitle him to some mitigation credit under MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." This mitigating condition has partial application to Applicant's situation, given the limited financial resources he has had to work with over the past few years. Full mitigation credit is not available to Applicant, however, based on the facts of this case. Neither Applicant's oral nor written evidence reflect sufficient repayment efforts on his covered debts to warrant safe predictions that he can resolve his debt delinquencies within the foreseeable future.

Moreover, even though Applicant's debt delinquencies arose in large measure due to disputed debts associated with his ex-wife and periods of unemployment, he could have been reasonably expected to have exerted more responsible efforts in fulfilling the promises he made to the OPM investigator who interviewed him after his finances 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 demonstrate any payment progress on all but a few of the debts since his divorce and remarriage.

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 impose 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. While unemployment and circumstances associated with his prior divorce play a considerable role in Applicant's accrual of his delinquent debts, Applicant has not provided sufficient documented explanations as to why he has been unable to make more concerted efforts to repay or

resolve his outstanding debts since he and his current wife began accumulating more available income.

Based on the documented payment information available for consideration in this record, the evidence is insufficient to enable Applicant to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts. Applicant's efforts to pay off his listed debts are encouraging. They remain a work in progress, though, and require more concrete efforts to address his debt delinquencies.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, his disagreements with his ex-wife over payment responsibility, the limited resources he has had to address them in the past , and the modest steps he has mounted to address his old debts with his current resources, it is still too soon to make safe predictive judgments about Applicant's ability to repay his accrued 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 SOR subparagraphs 1.a through 1.g, 1.l, 1.k through 1.l, and 1.n. His documented addressing of the debts alleged in SOR subparagraphs 1.h, 1.j, and 1.m are sufficient to mitigate security concerns associated with these debts.

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.g, 1.l, 1.k through 1/l, and 1.n	Against Applicant
Subparas 1h, 1.j, and 1.m:	For Applicant

Conclusion

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

