



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



In the matter of:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 09-00688

Appearances

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

February 18, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On June 30, 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 August 17, 2009, and requested a hearing. The case was assigned to me on September 15, 2009, and was scheduled for hearing on December 9, 2009. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of nine exhibits (exs. 1-9); Applicant relied on one witness

(himself) and no exhibits. The transcript (Tr.) was received on December 17, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is granted.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documented medical payments, endorsements, and performance evaluations. For good cause shown, Applicant was granted ten days to supplement the record. Within the time permitted, Applicant supplemented the record with a cover letter explaining his enclosures and documented endorsements from his supervisors, medical payments and invoices related to his wife's medical services and medications, and a certificate of completion of security training. Applicant's exhibits were admitted as exhibits A through D.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have incurred 11 delinquent debts totaling about \$12,000. In his answer, he admitted most of the listed debts, but denied others without any explanations.

Findings of Fact

Applicant is a 65-year-old security guard for a defense contractor seeking a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant served four years of active duty with the U.S. Air Force between 1962 and 1966 (see ex. 1). During his tour of duty, he worked in the intelligence field as a cryptologist and held a top secret security clearance (Tr. 33). He married his first wife in February 1970. They divorced in 1975 (see ex. 1). He has one daughter from this marriage. He remarried in October 1981 (see ex. 1; Tr. 36-37). He has three stepchildren from his second marriage, but no children of his own (Tr. 37).

For a number of years following his Air Force discharge (between 1966 and 1975), Applicant worked in the accounting field for a large tech company (Tr. 34-35). He changed professions following an accident, and worked in the building trades for many years as an in-house painter (Tr. 35-36). During this time, he and his wife did not encounter any problems with their finances (Tr. 39). His finances turned for the worse, however, after he was injured in a work-related accident in 2005. As the result of his accident, he suffered herniated discs in his back, and could not work for over three years (see ex. 2; Tr. 28, 38). With his wife also disabled and unable to work, Applicant and his spouse struggled to keep up with their bills (Tr. 28). Fearful of losing his job, he declined to seek workman's compensation benefits (Tr. 41). By the time he quit his job in 2005, and relocated with his wife to their current state of residence, the time had expired for his filing workman's compensation claims.

At age 62 with a permanent disability, Applicant was eligible for early social security benefits (Tr. 39-40). So, he determined to quit his job and begin collecting his social security retirement benefits. While out of work, Applicant accumulated a number of delinquent debts that he has not been able to pay or otherwise resolve.

Credit reports in evidence document each of the debts listed in the SOR to be debts that Applicant incurred either separately, or jointly (see exs. six through nine). While he could identify some of the listed debts (e.g., creditors 1.b through 1.e and creditor 1.j), he could not identify others (e.g., creditor 1.a, creditor 1.f through creditor 1.i and creditor 1.k). However, he could provide no documented proof of his disputes with any of these creditors, and did not provide any specific explanations of the bases of his denying responsibility for any of these listed debts. Based on the information compiled in his credit reports, there is enough data to draw reasonable inferences that these listed debts belong to Applicant.

Applicant's wife provided financial help while she worked. But since her 1983 auto accident, she has not been able to work (Tr. 28). She was taking their kids to school at the time, and was struck by another driver who had no insurance, and left the scene of the accident without providing identifying information (Tr. 45-46, 67). His wife had only minimum insurance at the time and no known uninsured motorist coverage (Tr. 59-60). His wife's own insurance company paid her \$25,000 out of her medical policy to cover her billed medical expenses (Tr. 59-62). With part of these monies, she paid her lawyer's fees, and as a result, she did not have enough in reserve to discharge all of her outstanding medical bills associated with her three corrective surgical procedures (Tr. 47, 58-59).

To conserve money following his own accident, Applicant and his wife moved in with his sister-in-law in 2005 (Tr. 44). In 2007, he and his wife left his sister-in-law's house and moved into a small duplex apartment for \$1,200 a month (see ex. A). His monthly income at the time consisted of his retirement (\$1,100), his wife's disability payments (\$415), and whatever he could earn from small painting jobs (ex. A). After allowances for his rent payments, car insurance, utilities, food, and their medical bills, Applicant and his wife could not make ends meet (ex. A). His monthly income stream remained virtually unchanged until he was hired by his current employer in July 2008 (see exs. 1 and A).

More recently, Applicant's wife developed a debilitating disorder known as fibromyalgia: a trauma-related condition that is very painful (Tr. 49). It affects her nerves and muscles (Tr. 31-32, 49). She has had additional surgeries to address her condition. While she has enjoyed positive outcomes from these surgeries, her other organs have deteriorated due to the disease (Tr. 49-50). His wife is still a very sick woman who requires continuing medical care to address her weekly emergencies (Tr. 50-51). Her insurance co-pays cost with her medical insurance cost Applicant \$300 to \$400 a week (Tr. 51-52).

While employed full time, Applicant could cover his wife's medical bills and other current expenses. He could not while he was out of work. He returned to work on a full-

time basis with his current firm in July 2008, and worked for them for about a year before his firm lost the contract that funded his employment (Tr. 30). While employed on a full-time basis, he was able to cover his current expenses, and make some payments on his delinquent debts (see ex. 4; Tr. 55). Just how much he was able to pay on his old debts is not documented.

Once Applicant lost his full-time position with his current firm, he has continued to work for them on a limited part-time basis, pending his obtaining of a security clearance (Tr. 30-31, 53-54). His employer does cover his wife's medical expenses, and he needs a security clearance to become a full-time employee again (Tr. 71-74). Applicant's supervisor assures he has a full-time position for him should he obtain his security clearance (Tr. 31, 74). With a full-time position, Applicant believes he will be in a position to resume his payments on his bills (Tr. 31, 55).

With his disability payments and part time employment, Applicant is able to take care of his household expenses and his wife's co-payments, but no more. His personal financial statement of April 2009 lists combined monthly income of \$3,040 and total monthly expenses of \$2,927 (see ex. 4). He listed scheduled debt payments (some SOR debts, and some not) of \$913, and actual payments of only \$313. To make his scheduled debt payments would place him in a deficit situation. His situation has not changed much to date, and he and his wife remain unable to address their old debts with their limited funds (Tr. 57-58).

Applicant has contacted a number of his creditors and offered to make \$25 a month payments while he was disabled and unable to engage in full-time employment (Tr. 45). His largest creditor (creditor 1.c) declined Appellant's offer. It then initiated suit to collect its \$4,130 balance and obtained a judgment against Applicant (Tr. 29-30). To pay for his rent and necessities, he and his wife sold their wedding rings and moved their family into his son's home (Tr. 29). To meet his medical premiums and pay down his debts, Applicant needs full-time employment.

Applicant is well regarded by his supervisor and other members of his facility (see exs. A and B; Tr. 71-76). His direct supervisor describes Applicant as an outstanding security guard who displays excellent judgment and trustworthiness (Tr. 74-76). He considers Applicant to be a responsible employee who is an asset to his company.

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 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 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 respected employee of a defense contractor who accumulated delinquent debts during his extended periods of recurrent disabilities of both himself and his wife. Because of his own physical limitations and disabilities of his spouse, he has been unable to address any of his debts.

Applicant's accumulation of delinquent debts over a four-year period 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." Without any documented payment or dispute history, or tangible plan to resolve his delinquent debts, he cannot be credited with any more than minimal progress to date in regaining control of his finances.

Applicant's progress to date in regaining control of his finances is not encouraging. Based on his evidentiary showing, his proofs do reflect considerable extenuating circumstances associated with his wife's disabilities and his own. 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 application to Applicant's circumstances.

Applicant has not been in a position to even address all of his non-SOR covered debts, much less any of listed debts with the part-time job he has with his current employer. He could provide no documented disputes of any of the listed debts or estimates of when he could begin to address his delinquent debt with the limited funds he receives from his retirement and part-time employment as a security guard. As a

result, he is not positioned to take advantage of either MC ¶ 20(e), “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue,” or MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Because he has not been able to provide any repayment plan or evidence of financial counseling to date, he may not invoke any of the mitigating benefits of MC ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” or MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

In the past, the Appeal Board has not required an applicant to demonstrate he is debt-free or has a plan to pay off all of his debts See ISCR Case No. 08-06567 at 3 (App Bd. Oct. 29, 2009); ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2009). All that is required of an applicant is that he act responsibly under the circumstances and develop a reasonable plan for repayment. The strength of the applicant’s repayment plan must be proportionate to what can be reasonably determined that the “Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.” See ISCR Case No. 08-06567 at 3.

In Applicant’s case, he has sufficiently demonstrated his good credit history before his 2005 accident and why he and his wife have fallen behind in their debts and have not been able to repay them with their limited resources. He assures he will resume repayments of his delinquent debts as soon as his company restores him to full-time status. Currently, the only impediment to his being granted a full-time position is his lack of a security clearance. And his supervisor has committed to restoring Applicant to full time employment status once he obtains a clearance.

Although applicants are expected to address their debts and develop reasonable repayment plans after they have returned to work and are in a position to repay their financial obligations, Applicant has yet to recover from the circumstances that prevented him from finding full-time employment. As he awaits notification of the status of his security clearance, he is limited to part-time work with his employer. Until he is able to return to work on a full-time basis, he is simply not in a position to develop a reasonable repayment plan. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004).

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 an applicant to make concerted efforts to pay or resolve his debts when able to do, or develop a reasonable repayment plan, raises security-significant concerns about the sufficiency of an applicant's demonstrated trust and judgment necessary to safeguard classified information. Applicant is simply not in a position to do any more at this time than fund his living expenses and take care of his wife's monthly cost-shares under his company-provided insurance plan.

Whole-person assessment enables Applicant to surmount the trust and judgment questions raised by his lack of any documented repayment efforts and repayment plan. His positive endorsements from his supervisors merit considerable praise and commendation. Based on his credible showing of his caring for his sick wife and still maintaining responsible control of his own finances, Applicant convinces that he develop a reasonable repayment plan for his remaining delinquent debts once he is able to regain his full time work status with his current employer.¹

Family disabilities, unemployment, and underemployment conditions have clearly played a major contributing role in Applicant's accumulation of his delinquent debts over an extended period. He provided a considerable amount of documentation of his medical statements and payment receipts covering his wife's medical needs, which he has diligently prioritized. He has also provided documented explanations of how he plans to repay his debts with his obtaining a full-time guard position with his present employer. His strong endorsements and family commitments are helpful, too, in making a determination of his overall trustworthiness and reliability under both the financial guideline and a whole-person assessment.

Based on Applicant's showing of longstanding extenuating circumstances associated with the disabilities of himself and his wife, his payment record when he was able to work full time in his chosen field, and his reasonable payment plan conditioned upon his return to full time employment, the evidence is sufficient to enable Applicant to establish judgment and trust levels adequate to overcome security concerns arising out of his lack of progress in addressing his delinquent debts over the past four years.

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, there is sufficient evidence of his good character, diligence, honesty, and conscientious efforts in managing his

¹ The Government, of course, can always re-validate Applicant's financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. Conditional clearances are not permitted under the Appeal Board's jurisprudence, and nothing in this decision is intended to suggest that this clearance is in any way conditional. See ISCR Case No. 08-07540 at 2 (App. Bd. Jan. 8, 2010).

finances on his limited income to make safe predictive judgments about his ability to repay his accrued debts and restore his finances to stable levels commensurate with his holding a security clearance. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.k.

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): FOR APPLICANT

Sub-paras. 1.a through 1.k: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

