



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



In the matter of:

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ISCR Case No. 09-03064

Applicant for Security Clearance

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

February 28, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant mitigates the financial consideration security concerns. Clearance is granted.

Statement of the Case

On March 15, 2010, 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 DOHA 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 Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AGs) that were implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on April 8, 2010. The case was assigned to me on September 27, 2010, and was scheduled for hearing on October 29, 2010. A hearing

was held on the scheduled date. At the hearing, the Government's case consisted of nine exhibits (GEs 1-9). Applicant relied on one witness (himself) and four exhibits (AEs A-d). The transcript (Tr.) was received on November 8, 2010.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 7 bankruptcy relief in December 2004 (discharged in March 2005), (b) accumulated 11 debts exceeding \$35,000, and (c) incurred a tax lien over \$500.

In his response to the SOR, Applicant admitted to filing for Chapter 7 bankruptcy (discharged in March 2005), and to accumulating the 11 consumer debts listed in the SOR, but he denied owing any taxes. He claimed one of his debts (covered by subparagraph 1.b of the SOR) to have been included in his Chapter 7 bankruptcy, and expressed an intention to include the remaining debts in a planned Chapter 13 reconstruction and payment plan.

Findings of Fact

Applicant is a 51-year-old video systems view technician 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 has been married for 32 years. (GE 1; Tr. 47) He and his wife have two children: a son, age 29, and a daughter, age 25. His son is married and has his own place. (Tr. 58) Applicant's daughter and his parents reside with Applicant and his wife. (Tr. 56-60), and occupy the basement of their home. (Tr. 60) Along with the accumulated medical expenses incurred on behalf of their children, Applicant and his wife incurred educational expenses associated with his daughter's schooling. (Tr. 59-60) His daughter has used student loans to help her finance her education and gives Applicant \$75 to \$100 a month to help with living expenses. (Tr. 91)

Applicant's current work with his defense employer covers the field of electronics. (Tr. 93) He is responsible for building video walls and providing video surveillance. (Tr. 93)

Both Applicant and his spouse encountered medical issues in 2004. Applicant had been diagnosed with diabetes. (GE 5; Tr. 67-68) and underwent shoulder surgery the same year. (Tr. 62-69). His wife encountered medical complications from a work-related accident in her veterinarian facility in 2004 that required surgical intervention to repair a torn shoulder. (GE 5; Tr.48-51, 62-69) Because their insurance covered only the surgical procedures, they incurred additional medical bills covering his wife's post-intervention therapy that they could not satisfy. (Tr. 48-54, 62-63) Following his wife's 2004 shoulder surgery, she was laid off from her employment. Thereafter, she was unemployed for about eight months and could not use her arm during this period. (Tr. 51) In late 2004, his wife returned to work for this same veterinary employer on a part-time basis as a relief technician. (Tr. 52)

Faced with mounting consumer bills and medical bills that were not covered by their medical insurance, Applicant and his wife made a decision in December 2004 to petition for Chapter 7 bankruptcy. (Tr. 48, 66-67) They document their receipt of on-line counseling in connection with their bankruptcy petition. (GE 3) They scheduled \$185,477 in secured debts in their petition and scheduled \$55,078 in unsecured non-priority debts. (see GE 3) His scheduled unsecured debts included the creditor 1.b debt listed in the SOR. (see GE 9) They listed net monthly pay of \$318 for him and \$382 for his wife. (GE 3) Applicant and his wife received their discharge in March 2005. (GE 3)

Several months after her shoulder surgery and her joinder in a Chapter 7 petition, Applicant's spouse experienced another medical emergency that required surgical intervention. (Tr. 52, 62-64). She discovered a hernia in early 2005 that required emergency hernia surgery. This procedure was undertaken on an out-patient basis and caused her to miss five days of work. (Tr. 52-53; 63-64)

In early 2007, Applicant's wife encountered kidney stones that necessitated surgical removal. (Tr. 52) She spent five days in the hospital recovering from the surgery and lost an additional week of work. (Tr. 52-53) Since this operation, she has been regularly employed for the most part. (Tr. 53)

After enduring eight years of treatment for diabetes, Applicant initiated insulin medications in 2006. (GE 5; Tr. 64) Barred from deploying while on insulin medication, he retired from the Air Force Reserve in August 2006 (GE 1; Tr.64-65) When he retired from the Reserve, he retired from his Air Force civilian job as well. (see GE 1; Tr. 64-65) His weekend Reserve duties were interrelated to his civilian responsibilities that he performed weekly for the same Air Force unit. (Tr. 72)

Following his Air Force retirement, Applicant encountered problems in finding full time work. Records show he worked several part-time and occasional full-time jobs between September 2006 and October 2008. (see GEs 1 and 5; Tr. 65) He incurred additional medical expenses and brief work losses in connection with the gall bladder surgery he underwent just after joining his current defense employer in 2008. (Tr. 68-69)

Faced with less available income, Applicant encountered difficulties keeping up with his bills. While he and his wife stayed in contact with their creditors, they lacked funds to satisfy their creditors. (Tr. 65) To help ease their financial burdens, they downsized in their living arrangements, reduced their monthly outlays, and consented to voluntary repossessions of their two vehicles. (GE 5; Tr. 65-66, 70) Still, the two creditors (creditors 1.g and 1.h) who repossessed their vehicles garnished his wages for about six months in 2010 until his lawyer was able to stop the practice. (Tr. 70)

By November 2007, Applicant's spouse had increased her work level with her veterinarian employer to around 25 hours a week. (Tr. 55) At this work level, she netted around \$400 every two weeks. (Tr. 56). She added an additional six hours to her work schedule in 2010, and the increased hours have improved her biweekly net pay to around \$500.

Concerned about his increasing debt, and wage garnishments, Applicant petitioned for Chapter 13 relief in March 2010. In his petition, he scheduled all of his outstanding debts, inclusive of the debts listed in the SOR. (see GE 9; Tr. 86-88) His scheduled unsecured debts exceed \$42,000 and encompass claims on credit card balances, broken leases, vehicle repossession deficiencies, and medical accounts. (compare GEs 2, 3, and 7 with GE 9) He also scheduled all of his priority claims (inclusive of creditor 1.j, which he denies any knowledge or responsibility for) in his petition. (GE 9; Tr. 85-86)

In schedule J of his Chapter 13 petition, Applicant listed net monthly income of himself and his spouse of \$3,844 and net monthly expenses of \$3,755. (GE J) This leaves him a small net remainder of \$89. (Tr. 89-92)

Applicant's Chapter 13 petition was approved in September 2010. Its payment terms require Applicant to make monthly payments of \$93. (AE C). He documents regular monthly (four in all) payments since July 2010, and has not missed any of his required payments to the Chapter 13 trustee. (AEs A and C) Applicant and his wife have also increased their insurance coverage to include work-related accidents. (Tr. 48-49) They continue to live frugally within their means. He drives a used truck that he purchased for about \$5,000 and lists the vehicle in schedule J of his Chapter 13 petition. (GE 9); Tr.75-77). He currently pays \$110 a month on this vehicle, and owes around \$2,400. (Tr. 75-77)

Applicant is timely with his rent and all of his other current bills. (AE E; Tr. 92). He has no outstanding debts besides the ones included in his Chapter 13 plan. (Tr. 92)

Acting on his lawyer's suggestion, Applicant and his wife are currently enrolled in an on-line financial counseling course. (Tr.80-81) It is designed to help them improve their financial budgeting. Both Applicant and his attorney assure that Applicant is financially equipped to handle his \$93 monthly payments to the bankruptcy trustee. See AE A; Tr. 88-91. Applicant received two cash awards from his employer this past year, and his father (who resides with him) helps him with grocery expenses every month. (Tr. 90-91) And his daughter (who also resides with him) assists him with her living expenses. (Tr. 91)

Applicant is well-regarded by his supervisor and coworkers. (AE B; Tr. 38-39; 44-46) Applicant's supervisor and coworkers, who have worked with him for over two years, describe him as reliable and trustworthy. (AE B; Tr.38, 44) They credit him with demonstrated good character and excellent performance in the execution of his assigned responsibilities as a video systems view technician. (AE B)

Applicant's pastors describe Applicant as a faithful member of their church and active participant in the church's activities. (AE B). Both pastors credit Applicant with major contributions to the church's grocery relief program that benefits disadvantaged families every year. (AD B) Friends characterize Applicant as honest, forthright, and loyal. (AE B)

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." They 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.

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 a number of delinquent debts during recurrent periods of medically-related unemployment for both him and his wife. Unable to address his debts while burdened with heavy medical bills they could not absorb, Applicant and his wife elected to petition for Chapter 7 bankruptcy protection. Following his bankruptcy discharge in 2005, however, Applicant and his spouse both encountered extended unemployment problems and again accumulated delinquent debts. He and his wife have since made earnest efforts to address their remaining debts, and have since turned to Chapter 13 relief for their protection.

Applicant's debt delinquencies that prompted his 2004 Chapter 7 bankruptcy and his post-bankruptcy difficulties in managing his 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." They have been in delinquent status for some time.

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). Failure of the applicant to make concerted efforts to pay or resolve 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.

For the most part, Applicant's accumulated debt delinquencies that were absorbed by his Chapter 7 bankruptcy discharge involved major medical bills associated with surgical interventions (both his and his wife's) that his insurance carrier did not cover. Burdened by continuing medical expenses and lay-offs following his bankruptcy discharge, Applicant and his wife continued to encounter difficulties in paying their bills. Acting on the advice of counsel, he and his wife filed for Chapter 13 relief in May 2010.

Records show that he has made regular payments to the Chapter 13 trustee as required by his approved plan. To date, he shows good promise of future compliance with the terms and conditions of his Chapter 13 plan.

Evaluating all of Applicant's repayment efforts contextually, considering the difficult medical and unemployment difficulties that he and his wife have endured over the past six years, Applicant may be credited with serious, good-faith efforts to resolve his debts, first through his securing Chapter 7 bankruptcy relief, and more recently through Chapter 13 repayment proceedings.

From an evidentiary standpoint, Applicant's proofs are sufficient to establish significant 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 considerable application to Applicant's circumstances.

Applicant's repayment efforts entitle him to some mitigation credit under 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," and MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as well. To be sure, his recent Chapter 13 plan is still relatively recent and entails a modest track record of monthly payments under this plan.

Still, Applicant has demonstrated credible resolve in addressing his most recent debts through his Chapter 13 plan, and by all reasonable accounts is properly equipped to meet his monthly trustee payments and stay current with his other bills. Overall, he is on track to complete his Chapter 13 plan. Accordingly, these mitigating conditions have application to Applicant's situation.

Applicant may take very limited advantage of 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.” He claimed to have no knowledge of the source of this documented tax lien, but provided no documented proof of challenging the \$500 state tax lien, or resolving the underlying tax. However, he did list the tax lien as a priority claim in his Chapter 13 petition, and the claim is included in the final plan approved by the court. His inclusion of the claim reflects Applicant’s willingness to resolve the claim. His actions are enough to afford him some limited basis for applying MC ¶ 20(e).

Historically, Applicant has demonstrated considerable extenuating circumstances over the past six years. He and his wife, through no fault of their own, have experienced a myriad of medical complications associated with recurrent medical procedures dating to 2004. Their medical procedures have limited their ability to work between 2004 and 2008 and contributed to their financial difficulties. They have shown, good faith, though, in seeking Chapter 7 protection in 2004, and more recently in their petitioning for Chapter 13 relief in March 2010. And with good prospects for Applicant and his wife retaining their full-time employment positions, Applicant shows renewed control over his finances.

Based on a whole-person assessment, Applicant surmounts the judgment questions raised by his accumulation of delinquent debts (many medically-related) over an extended period of recurrent unemployment for both himself and his wife. The significant praise and credit he has earned from his supervisor, coworkers, and pastor merit considerable weight when making an overall commonsense appraisal of Applicant’s security eligibility. On balance, Applicant has shown sufficient tangible effort in addressing his debts under challenging circumstances to mitigate security concerns over his substantial debt accruals and demonstrate renewed control over his finances.

Taking into account all of the extenuating facts and circumstances surrounding Applicant’s debt accumulations, the numerous medical complications and employment disruptions that Applicant and his wife have experienced over the past six years, and the concerted recent steps he has undertaken to address and repay his accumulated debts, safe predictive judgments can be made about his ability and intentions to repay his accrued debts through his approved Chapter 13 plan 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 l.

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**

Subparagraphs 1.a through 1.l : **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

