



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-03508

Appearances

For Government: Melvin Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

February 26, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On September 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 October 19, 2009, and requested a hearing. The case was assigned to me on December 14, 2009, and was scheduled for hearing on January 14, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of seven exhibits (ex.). Applicant relied on one witness

(himself) and seven exhibits. The transcript (Tr.) was received on January 28, 2010. 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 an updated financial statement. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded five days to respond. Within the time permitted, Applicant supplemented the record with a cover letter outlining his documented payment plans with three of the listed creditors (creditors 1.a, 1.b, and 1.d), and his plans to complete a payment arrangement with the remaining creditor (creditor 1.c). Applicant also provided documented financial statements reflecting his current income, expenses, and estimated remainder. His submissions do not include any payments to his listed creditors. His post-hearing exhibits were admitted as exhibits H and I.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated four delinquent debts as follows: ¶ 1.a (\$9,088), ¶ 1.b (\$11,013), ¶ 1.c (\$5,027), and ¶ 1.d (\$4,965).

In his answer to the SOR, Applicant admitted each of the allegations in the SOR. He explained that he has repayment plans with two of the creditors listed in the SOR (creditors 1.a and 1.b), but has been unable to reach the remaining two creditors (creditors 1.c and 1.d).

Findings of Fact

Applicant is a 44-year-old security guard 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 came to work for the predecessor of his current employer in October 2008 as a security guard, and continues to work for the same successor employer. He is also a licensed vocational nurse. He has three years of active military duty (2005-2007) and continues to serve in the active reserves of the United States (U.S.) Army (see ex. 1; Tr. 53-54, 65).

Applicant hopes to become a full time registered nurse (RN) with the Veterans Administration (VA) and believes a security clearance is required for the position (Tr. 71-72). He needs a few credits to satisfy the academic requirements for an associate of arts (AA) degree in registered nursing (RN), and plans to complete these requirements through a program offered by the VA (Tr. 84-85). In his post-hearing submissions, Applicant indicated he has begun the orientation process with the VA for the nursing position he expects to fill in early March 2010 (see ex. H).

Applicant married his former spouse in August 1998 (ex. 1). He has two children from this marriage (ages 11 and 12). During his marriage to his first wife, Applicant opened credit card accounts with creditors 1.a through 1.d (see ex. 3). Applicant and his wife used these credit cards mostly to pay bills (Tr. 34-35). While three of the accounts were joint accounts (i.e., creditors 1.a, 1.b, and 1.d), Applicant opened the remaining account (creditor 1.c) individually (see ex. 2; Tr. 31-35).

After their divorce in 2002 (Tr. 37), and his ensuing layoff in 2003, Applicant could not afford to make the minimum monthly payments on these accounts, and they became delinquent (ex. 3). While his finances improved somewhat since he returned to work, low-paying jobs, back child support obligations, and unavoidable living expenses have hampered his ability to address his old debts.

In an interview with an agent from the Office of Personnel Management (OPM) in February 2009, the agent asked Applicant about his payment intentions with his four delinquent credit card accounts (see ex. 3). Applicant committed to paying these debts when "he has the funds," and expressed his plan to pay them by 2012 (see ex. 3). He assured he was living within his means and accepted full responsibility for his delinquent debts (ex. 3).

After the issuance of the SOR in September 2009, Applicant made contact with three of his listed creditors and arranged payment plans with them (see exs. A, B, and D; Tr. 32-33). He documents making an initial \$103 payment to creditor 1.a, a \$200 payment to creditor 1.b, and a \$100 payment to creditor 1.d, in accordance with his established payment plans (exs. A, B, and D).

Special conditions are attached to Applicant's payment plan with creditor 1.d. It has two payment components: an initial payment of \$100 and a second payment of \$1,408, on or before January 28, 2010 (ex. D). Under the agreement's payment specifications, Applicant will be credited with full satisfaction of the listed \$4,965 debt after he has made his agreed payments in accordance with the agreement's payment schedule. Failure to make any of the required two payments in a timely way, however, automatically renders the agreement null and void (see ex. D). Whether Applicant has made his scheduled \$1,408 payment to creditor 1.d in a timely way is unknown.

Besides his four listed delinquent accounts, Applicant is obligated to make monthly child support payments on behalf of his two children (Tr. 51-53). He assures he is in compliance with his child support conditions, which call for 30 percent (around \$169 a month) withholding from his reserve pay and \$150 a month from his civilian job (see ex. F; Tr. 51-53). He still owes \$38,000 in back child support payments but assures he is current in his payments (Tr. 52-53). His claims are credible and are accepted. Applicant credits his fiancée with assisting him in reducing his monthly expenses through their shared living arrangements (Tr. 36-37).

Applicant still hopes to establish payment plans with his last remaining creditor with the assistance of a debt consolidation firm he recently contacted (see exs. C and H;

Tr. 34). To date, he has not sought any financial or established any repayment plan with the remaining listed creditor (creditor 1.c).

In the personal financial statement he completed in July 2009, Applicant listed net monthly income of \$2,054 and monthly expenses of \$1,770 (see ex. 3). He listed three debts totaling \$11,852 and monthly payments totaling \$233. And he listed a monthly remainder of just \$52 (ex. 3). In his updated financial statement, he listed net monthly income of \$2,053, reduced monthly expenses of \$1,311, and a slightly increased remainder of \$109 (see ex. 1).

Applicant is well regarded by his supervisors and coworkers (see ex. E; Tr. 73). His Army Reserve commander describes him as a dedicated, self-motivated, and reliable emergency medical technician, and a valued member of his command (ex. E). His supervising platoon sergeant with his Reserve unit characterizes him as highly trustworthy and an outstanding performer (ex. E.). Applicant's previous account manager and facility security officer who are familiar with his work describe him as dedicated and trustworthy (ex. E).

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 well-regarded security guard for a defense contractor who accumulated delinquent debts following his 2002 divorce and ensuing layoff in 2003. He has since established payment arrangements with three of the creditors listed in the SOR, and is attempting to work out a payment plan with the remaining creditor. Applicant's still outstanding delinquent debts raise 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, his lack of any documented counseling, and his inability to reach agreement with the remaining listed editor, Applicant can not be credited with any more than modest progress to date in regaining control of his finances. His noted repayment efforts provide no hard assurances of any reliable commitments to resolve his outstanding debts with the income sources currently available to him. To date, he has made just a few small payments to three of his acknowledged creditors, and still owes over \$30,000 in delinquent credit card debts, along with the considerable back child support he is responsible for.

Based on his evidentiary showing, Applicant establishes 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.a and 1.b 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 available to him over the past few years.

While Applicant's progress to date in regaining control of his finances is encouraging, he still has a considerable amount of work in store to document his earnest commitments to resolving his debts and restoring control of his finances. Whether he can establish an acceptable repayment arrangement with creditor 1.c and pay off all of his listed creditors in accordance with established payment schedules is uncertain. To date, he has not provided sufficient updated payment information to substantiate his stated expectations.

Moreover, even though Applicant's debt delinquencies arose in large measure due to his 2002 divorce and ensuing periods of unemployment and underemployment, he could have been reasonably expected to have exerted more sustained efforts in addressing his debts once the conditions (*i.e.*, unemployment) 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 demonstrate any substantial payment progress on his listed SOR debts since returning to work.

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.

Applicant's progress to date in regaining control of his finances is encouraging, but he still has a considerable amount of work ahead of him to establish the level of repayment history sufficient to sustain his commitments to resolving his debts and restoring control of his finances. Whether he can establish an acceptable repayment arrangement with creditor 1.c, fulfill the special payment terms established in his agreement with creditor 1.d, and pay off all of his listed creditors by the promised dates is uncertain.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. While unemployment and underemployment conditions clearly played a considerable role in Applicant's accrual of his delinquent debts, his explanations for not making more concerted efforts to repay or resolve his outstanding credit card balances since he returned to full time employment are not convincing. Although his positive endorsements from his supervisor and coworkers merit considerable praise and commendation, they, too, are not enough to enable him to surmount concerns over his lack of historical progress in addressing his outstanding accounts.

Afforded an opportunity to show more concerted efforts to address his listed debts after the hearing, he provided additional payment promises, but no evidence of additional payments on any of his existing payment plans, or completed payment plan with creditor

