



**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. 09-05255

Appearances

For Government: Braden F. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On February 4, 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 (AGs), implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on March 18, 2010. The case was assigned to me on June 18, 2010, and was scheduled for hearing on July 22, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of nine

exhibits (GE). Applicant relied on one witness (himself) and six exhibits (AE). The transcript (Tr.) was received on July 30, 2010.

Procedural Issues

At the beginning of the hearing, Department Counsel moved to strike the page numbers referenced in connection with each of the listed allegations. For good cause shown, Department Counsel's motion was granted.

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to provide documentation of his dispute with creditor 1.a and an updated personal financial statement. For good cause shown, Applicant was granted 21 days to supplement the record. The Government was afforded two days to respond.

Within the time permitted, Applicant submitted several documents through Department Counsel for consideration. They comprise an undated cover letter from Applicant and his wife (AE G); another undated letter from Applicant and his wife (AE H); an updated personal financial statement, dated July 27, 2010 (AE I); a faxed cover sheet from Applicant, dated August 12, 2010 (AE J); an undated letter to creditor 1.a (AE K); and a letter from creditor 1.a claiming an outstanding balance of \$6,284 (AE L). Department Counsel did not object, and I admitted Applicant's submissions as AEs G through L.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated 13 delinquent debts exceeding \$26,000; (b) petitioned for Chapter 13 bankruptcy relief in August 1992 (discharged in December 1997); and (c) petitioned for Chapter 13 bankruptcy relief in May 2001 (dismissed in September 2005).

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

Findings of Fact

Applicant is a 46-year-old data collector 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 married in April 1988 and has four children from this marriage. (GE 1; Tr. 70, 77-78) He has an Associate in Arts degree from an accredited college, and is pursuing a Bachelor of Science degree. (Tr. 63) He is using privately-funded student loans to finance his education, and assured his loans are in deferment status while he is enrolled in school. (Tr. 64-66) His wife attends an accredited university, and her schooling is mostly financed with scholarship funding. (see GE 4; Tr. 71) Applicant's children live with him and his wife.

Beginning in October 2008, Applicant experienced recurrent periods of unemployment. Records show that he was out of work for five months between October 2008 and March 2009 (see GE 3; Tr. 57-59), and again between November 2009 and April 2010. (Tr. 57, 93)

Applicant's finances

Applicant and his wife purchased a home in 1989 (Tr. 76), and they continue to reside in the same home. (Tr. 76-77) He incurred considerable medical expenses in 1990 and petitioned for Chapter 13 bankruptcy relief in August 1992. (Tr. 77-78) Applicant fulfilled the payment obligations of his plan and received his Chapter 13 discharge in December 1997. (see Tr. 78) By the terms of his plan, Applicant was able to keep his home. (Tr. 78)

In 2001, Applicant and his wife incurred additional medical expenses (associated with two miscarriages) that exceeded their insurance coverage. (Tr. 79-80) They learned they could not fiscally manage the expenses and remain current with their other bills. So, they petitioned once again for Chapter 13 bankruptcy relief. (GEs 6 through 8; Tr. 80-81) With less income to fund their debts due to work slowdowns and unemployment, Applicant encountered difficulties complying with his payment conditions and with retaining their vehicles and home. (Tr. 81-84). With only the Ford truck remaining on the schedule of creditors in his Chapter 13 plan, Applicant and his wife asked the trustee to dismiss his Chapter 13 petition. (Tr. 82-84) The court obliged and dismissed Applicant's Chapter 13 plan in September 2005. (GE 9)

In September 1999, Applicant purchased a Ford truck for \$16,266. (see GEs 2 and 5) Applicant assures that the truck has never been repossessed by the creditor or its assignees, is paid off, and no longer appears on his credit reports in the name of the truck seller. (see AEs B and D; Tr. 88-89, 127) Applicant says he used the title of the truck as collateral on a \$600 loan he needed for repairs on a used Blazer he owns. (Tr. 85-86), and claims the lender financing his Blazer repairs currently holds the truck title. (Tr. 86) Applicant makes monthly payments of \$60 on this loan, and is current with his loan payments. (Tr. 86-88) He is also current on his monthly payments for the Blazer he purchased for \$12,000. He currently owes \$9,931 on this vehicle. (Tr. 103)

Replying to Applicant's July 2010 inquiry, creditor 1.a claimed that it purchased Applicant's Ford truck account from the original lender. (AE J) Creditor 1.a reported an outstanding balance of \$6,284 (see GEs 2, 3, and 5) Creditor 1.a demanded payment from Applicant for the full amount. (AE L) Applicant's efforts to resolve the disputed debt with creditor 1.a have been unsuccessful to date. (Tr. 89-94) Applicant assures that he will add creditor 1.a's \$6,284 claim to his debt consolidation plan should creditor 1.a be able to validate its claim. (Tr. 127) Without any more proof to document the creditor 1.a debt one way or the other, inferences warrant that the listed debt covered by creditor 1.a is not a proven debt.

Addressing his remaining listed debts, Applicant documents paying the debts owned by creditors 1.f, 1.d, and 1.n (see AEs D and E; Tr. 52, 55-56, 99) Additionally, he

refinanced the account covered by creditor 1.h (by executing a new note for \$87,534, and curing the reported \$19,000 delinquent balance) and 1.l (\$178) at reduced interest rates (see AEs D and F; Tr. 53, 102-109). And he documented his bringing his account current with creditor 1.m. (see AE D; Tr. 55, 103-104)

In October 2009, Applicant enrolled in a debt consolidation program. (AEs C and D; Tr. 96-97) He listed several of the accounts in his consumers credit counseling (CCC) plan: creditors 1.b, 1.c, 1.e, 1.g, 1.j, and 1.k. (AEs C and D; Tr. 52-54, 96-101) But before he could make any headway with his plan, he was laid off. Since returning to full-time employment, he has restarted his CCC program and documents (a) his first payment to the program in March 2010 (AE D), and (b) monthly payments of \$103 thereafter (\$15 of which goes to CCC to cover administrative costs). (AE D; Tr. 97-98) CCC verifies Applicant's payments to the covered creditors in the plan. (AE D)

Applicant nets around \$2,742 a month. (AE I; Tr. 116) He has monthly expenses of \$1,350. (*compare* GEs 4 and AE I) He lists debt payments of \$1,269, allocated between his mortgagee (\$653); his car repair loan (\$30); his creditor 1.l debt (\$50), and his creditor 1.m debt (\$433). He has a net monthly remainder of \$123. (see AE I), and currently has no savings or retirement accounts. (Tr. 119)

Endorsements

Applicant is well-regarded by his supervisors and colleagues. (see AE A) He documents numerous credits for his contributions to his team's missions. His current supervisor described his exemplary technical supervision of test data collectors.

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), and "[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 her 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 periods of recurrent unemployment with considerable medical expenses. He resolved his accrued debt issues in 1997 with a successful Chapter 13 petition, and completed most of the Chapter 13 plan he initiated in 2001 before he asked for, and was granted, a dismissal. More recently, Applicant has addressed a number of his debts individually and availed himself of the debt consolidation services of CCC to resolve most of his remaining debts. He documents paying several of his listed debts, refinancing others, and making payments on those included in his debt consolidation plan. Applicant disputes the only debt he has not been able to favorably resolve.

Applicant's accumulated debt delinquencies 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."

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.

Addressing his listed debts, Applicant documents repaying two of his debts (i.e., those covered by creditors 1.f, 1.d, and 1.n), refinancing two others at reduced interest rates (creditors 1.h and 1.l), and bringing current his account with creditor 1.m. He included his remaining debts (save for creditor 1.a, which he disputes) in his debt consolidation plan with CCC and is making regular monthly payments to his CCC debt consolidator.

Applicant has a positive remainder every month, and he has shown considerable progress in the payment of his debts since he returned to full-time employment this year. The debts included in his debt consolidation plan are small in the aggregate and

realistically should be paid off within two years based on the monthly rate of payment he is committed to making.

Evaluating all of his repayment efforts contextually, and given the difficult medical and unemployment issues he has had to manage the past few years, Applicant may be credited with good-faith efforts to resolve his debts and regain control of his finances. He has made steady progress to date in regaining control of his finances and shows good promise for fulfilling his remaining debt obligations.

Based on his evidentiary showing, 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)," applies to Applicant's circumstances.

Applicant's repayment efforts entitle him to mitigation credit under both MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and 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." These mitigating conditions have application to Applicant's situation, considering his repayment efforts and credible reasons for disputing the creditor 1.a debt.

In balance, Applicant has shown good faith in addressing his debts since he returned to full-time employment with his current employer this year. And, with his improved financial situation (which includes a net monthly remainder), he demonstrates that he is now firmly in control of his finances and can be expected to stay current with his refinancing and debt consolidation efforts.

Based on a whole-person assessment, Applicant surmounts the judgment questions raised by his accumulation of delinquent debts during recurrent periods of unemployment and mounting medical expenses. His positive endorsement from his supervisor merit considerable praise and commendation. In balance, he has shown sufficient tangible effort in addressing his debts to mitigate his listed delinquent debts and demonstrate restored control over his finances.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to work with during recurrent periods of unemployment and uncovered medical expenses in 2001 and 2009, and the concerted steps he has taken to address his debts, safe predictive judgments can be made about his ability and intentions 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.p.

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.p : 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

