



**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. 09-06312

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2010

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On November 23, 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 Adjudicative Guidelines (AGs).

Applicant responded to the SOR on December 14, 2009, and requested a hearing. The case was assigned to me on March 15, 2010, and was scheduled for hearing on April 13, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of five exhibits (ex.). Applicant relied on one witness (himself) and eight exhibits. The transcript (Tr.) was received on April 21, 2010. Based

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

Summary of Pleadings

Under Guideline F, Applicant is alleged to have incurred seven debts exceeding \$38,000. In his response to the SOR, Applicant admitted each of the allegations without explanation.

Findings of Fact

Applicant is a 40-year-old technical training instructor 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.

In 1989, Applicant married W1; he divorced her in November 1999. See Ex. 1; Tr. 54. He has five children (including stepchildren) from this marriage. Tr. 56-57. He married W2 in November 2000. Ex. 1; Tr. 54. He and his wife have no children from their marriage. One of Applicant's children lives with W1. Tr. 56. His youngest (age 15) lives with him and W2. Tr. 55.

Applicant enlisted in the U.S. Army (Army) in September 1993 and served five years of active duty with the Army before he received his honorable discharge in May 1998. See Exs. 1 and H. He earned a number of service awards during his military service. Ex. H.

Following his Army discharge, Applicant worked in various jobs in the private sector and maintained good credit while he was employed. He was unemployed between June 2003 and April 2004 following a layoff from his job. Ex. 4; Tr. 33-34. He survived financially on a small severance pay package he received from his employer and unemployment benefits that expired after 26 weeks. Ex. 4; Tr. 34. During his extended period of unemployment he lost his home to foreclosure (with no deficiency) and had two cars repossessed in January 2004: one to creditor 1.d (\$7,313), and the other to creditor 1.f (\$3,881). Tr. 34-36, 51-52.

Over a three-year period between 2005 and 2009, Applicant worked in various jobs: a few full time and some on a part-time basis. See Ex. 1; Tr. 37-39. Records document that he was laid off from one employer in May 2008, when the company's service contract was not renewed. Exs. 1 and F; Tr. 40. After finding work as an engineering technician for another firm in the semiconductor industry in August 2008, this firm laid him off as well in February 2009. See Ex. G; Tr. 40-41.

Around May 2009, Applicant found work with a defense contractor as a certified technical training instructor. Tr. 41-43. This defense contractor laid him off in January 2010. Tr. 43. However, this employer continues to sponsor Applicant's application for a security clearance. See Ex. 4; Tr. 44-49. Since April 2010, he has worked in the real estate sector. Tr.44.

Applicant has a net monthly income of \$2,643. See Ex. 4; Tr. 64. W2 recently returned to work and nets about \$2,773 a month. Tr. 65, 98-99. Together, they have monthly expenses of around \$2,000, and debt payments of about \$1,400. See Ex. 4; Tr. 73. They have a net monthly remainder of around \$2,000 before addressing any of their old debts. Tr. 73-74.

Applicant has no concrete plans to address his old debts at this time. Tr. 52, 97-101. The financial counselor he consulted with in 2008 advised him to avoid paying his old debts, which are likely barred by pertinent statutes of limitation, and concentrate on building new credit. See Exs 1 through 3, 5, A and B; Tr. 76-80, 94-95. His most recent credit report (Ex. A) reflects his payments of smaller debts not listed in the SOR. Ex. A; Tr. 93-95. With money from his moving expenses reimbursement from his current employer, Applicant paid some of his small debts. He will continue to explore his legal options, but made no commitment to address his old debts.

Applicant provided no endorsements or fitness evaluations. He furnished a training certificate and a lay-off notice from his defense sponsor. See Exs. B and C.

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 was laid off from his defense sponsor in May 2009, but continues to be sponsored for his security clearance by the same defense contractor. He accumulated a number of delinquent debts while laid off between 2003 and 2004, and lost his house to foreclosure and had two of his cars repossessed.

Applicant’s pleading admissions of the debts covered in the SOR 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 credit reports, and provide ample independent proof of his debts. His accumulation of unresolved 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.”

Without any documented payment history or tangible plan to resolve his delinquent accounts, Applicant cannot be credited with any more than minimal progress in regaining control of his finances. He has used his monthly remainder to cover his current expenses and has been counseled to ignore his oldest debts, most of which are time-barred by pertinent statutes of limitations. To date, he has made just a few small payments to his current creditors, and has a considerable amount of work ahead of him to demonstrate his earnest commitment to resolving his past debts and restoring control of his finances. Applicant’s progress to date in regaining control of his finances is encouraging, but it is still a considerable work in progress that reflects the lack of any attention to his delinquent accounts with the resources 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 application to Applicant’s circumstances. Once conditions changed for Applicant, however, this mitigating condition could no longer be accorded the same weight.

Applicant’s counseling sessions with a financial counselor entitle him to take limited advantage of 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.” His financial counselor’s suggested disregard of his time-barred old debts produced no useful payment plan for Applicant and warrants only partial application to his circumstances.

Applicant’s lack of any repayment efforts with respect to his delinquent accounts, entitle him to no mitigation credit under either MC ¶ 20(d), “the individual initiated a good-

faith effort to repay overdue creditors or otherwise resolve debts,” or 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.” Full mitigation credit is not available to Applicant, however, based on the facts of this case. Neither Applicant’s oral nor written evidence reflect any significant voluntary repayment efforts on his major tax debt and most of his smaller debts.

Even though Applicant’s debt delinquencies arose in large measure due to circumstances outside of his control, he could have been reasonably expected to have exerted more responsible efforts in addressing his debts once the conditions (*i.e.*, recurrent 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 material payment progress since returning to full time employment.

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 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 and inability to address them with his available resources. His military service reflects considerable contributions to his country and warrants a good deal of praise and credit. In balance, though, he has not shown enough tangible effort in addressing his major delinquent accounts to mitigate his still-delinquent debts and credit him with restored control over his finances.

While unemployment and underemployment clearly played a considerable role in Applicant’s accumulation of so many debts over extended and recurrent periods of time, Applicant failed to provide sufficient documented explanations as to why he has been unable to make more concerted efforts to repay or resolve his delinquent accounts.

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, 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 subparagraphs 1.a through 1.g.

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): AGAINST APPLICANT

Subparas 1.a through 1.g : Against Applicant

Conclusions

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

