



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-08065

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

March 15, 2011

**Decision**

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WESLEY, Roger C., Administrative Judge:

**History of Case**

On July 8, 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 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 August 5, 2010, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on September 20, 2010, and provided additional information within the 30 days permitted. The additional information consisted of documentation of Applicant's monthly payments on his student loan account since August 2009 and his enrollment in a credit counseling program and payment of old credit card accounts. Applicant's

submissions are admitted as Items 9 and 10. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated delinquent student loan debts as follows: (a) the creditor identified in subparagraph 1.a in the amount of \$11,251; (b) the creditor identified in subparagraphs 1.b through 1.e in the respective amounts of \$7,424, \$3,613, \$7,323, and \$2,972.

In his response to the SOR, Applicant denied each of the allegations of the SOR. He claimed that all of the listed student loan debts covered by the SOR are included in his repayment plan and attached documentation of his established repayment schedule with one student loan creditor.

### **Findings of Fact**

Applicant is a 40-year-old security officer 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 is single and has never been married. (Item 4). He has some on-line technical college credits (May 1996 to December 1997), and earned a diploma in advanced lock-smithing in December 1997. (Item 4) He earned additional college credits in the early 1990s. He has no military service to his credit.

Applicant accumulated a number of student loan debts while attending college in the early 1990s. (Item 7) Credit reports reflect delinquent student loan debts totaling approximately \$32,500. (Items 5 and 6) Applicant is indebted to creditor 1.a in the amount of \$12,427. (Item 5). This loan was initiated with Sallie Mae and transferred to creditor 1.a before being consolidated with another creditor in July and August 2009. (Item 3) Applicant provided documentation of monthly payments of \$203 to this consolidated account since July 2009 (Items 3 and 10), and to Sallie Mae earlier for the months of May 2008 through May 2009 prior to the consolidation with the current creditor holding this student loan account. (Item 3) His supplemental submissions document his scheduled monthly payments to creditor 1.a between August 2009 and September 2010. See Items 9 and 10.

Besides his consolidated Sallie Mae student loan, Applicant had prior student loans with creditor 1.b-e. These accounts total over \$21,000 and have since been consolidated with another education loan servicing firm. (Item 3) With his answer, he documented his payments to this consolidated loan account in fulfillment of the requirements established by DoE for returning the accounts to rehabilitation status. (Items 3 and 8) Applicant also documented the consolidated creditor responsible for the accounts covered by subparagraphs 1.c through 1.e. This creditor set up a monthly installment account for him on his newly consolidated loans. (Items 3 and 8) Prior to consolidating his student loans with his new consolidated student loan creditor, Applicant made payments to the creditor identified in subparagraphs 1.b through 1.e.

(Item 3) In a letter to Applicant in September 2009, this latter creditor confirmed that Applicant's consolidated loan accounts would then be transferred to a new lender and his default status would be removed. (Item 8)

Applicant's provided personal financial statement reports monthly net income of \$2,400 and monthly expenses of \$1,886. (Item 8). His reported monthly payments on his student loan accounts total \$418, leaving him a net monthly remainder of \$96. (Item 8) Applicant's most recent credit report confirmed Applicant is timely with all of his other consumer accounts. See Items 5 and 6.

### **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 AGs 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 individual guidelines are pertinent in this case:

## 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

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's 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. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). 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 materiality showing, 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, the judge must consider and weigh the 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 evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-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 security officer for a defense contractor who accumulated a number of student loan defaults over the past 10 years. His accumulation of these delinquent debts and his past inability and unwillingness to address them warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and ¶19(c) “a history of not meeting financial obligations.”

Applicant’s debts are attributable in part to some indicated layoffs and other unexplained setbacks. His debts encompass multiple student loan accounts that he has since restored to current status.

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant’s inability to pay of or otherwise resolve his debts. Under the circumstances presented, MC ¶ 20(b), “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.

Moreover, some judgment problems persist over Applicant’s unexplained student loan delinquencies. However, he has since cured the deficiencies on each of his defaulted loan accounts, and they have all been returned to current status. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Evaluating all of his repayment efforts contextually, Applicant may be credited with serious, good-faith efforts to resolve his student loan defaults and regain control of his finances. He documents considerable progress to date in regaining control of his finances and shows good promise for fulfilling his remaining student loan 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 in part to Applicant’s circumstances.

Applicant’s repayment efforts entitle him to mitigation credit under MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as well. Applicant has demonstrated credible resolve in addressing his student loan accounts. These mitigating conditions apply to Applicant’s situation, considering his earnest repayment efforts.

Based on a whole-person assessment, Applicant surmounts the judgment questions raised by his accumulation of several student loan defaults in the past several years. On balance, he has shown sufficient tangible effort in addressing his

student loan defaults to mitigate security concerns over these accumulated debts and demonstrate restored control over his finances.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's student loan debt accumulations and the concerted steps taken to address them, 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.e.

Whole-person assessment enables Applicant to surmount the judgment questions raised by his accumulation of delinquent student loan debts. Overall, clearance eligibility assessment of Applicant based on the amount of information available for consideration in this record enables him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent student loan accounts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his explanations, and his documented corrective steps to restore his defaulted student loans to eligible status, safe predictions can be made about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance.

Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.e.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT**

Subparagraphs. 1.a through 1e: 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.

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Roger C. Wesley  
Administrative Judge

