



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-08160

Appearances

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

July 26, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant failed to mitigate security concerns over the state of his finances. Clearance is denied.

Statement of the Case

On November 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 15, 2011. The case was assigned to me on June 2, 2011, and was scheduled for hearing on June 23, 2011. A hearing was held

on the scheduled date. At the hearing, the Government's case consisted of seven exhibits (GEs 1-7). Applicant relied on one witness (himself) and one exhibit (AE A). The transcript (Tr.) was received on July 6, 2011.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four delinquent debts exceeding \$25,000. In his response to the SOR, Applicant admitted the debts as alleged without explanation.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with a signed endorsement, an updated security clearance application, evidence of steps to address his debts, sources of income and assets, and service awards. For good cause shown, Applicant was granted 18 days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with a signed copy of an endorsement letter, a list of his military awards and commendations, and evidence of his assets. Applicant's submissions were admitted as AE A revised and AEs B and C.

Findings of Fact

Applicant is a 43-year-old technical supervisor for a defense contractor, who seeks to retain his security clearance while he applies for an upgraded clearance. (Tr. 42-47) The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant is single and has never been married. (GE 1) He has no children. Applicant has three years of college credits but no degree or diploma. (GE 1; Tr. 39) Following a two and a half-month period of unemployment in 2007, Applicant joined his current employer. (GE 1; Tr. 40-41. 50-51) Since joining his current employer, he has served in Iraq in a civilian capacity. (Tr. 52)

Applicant enlisted in the Marine Corps in April 1989 and served five years of active duty. (GE 1; Tr. 40, 52-53) While in the Marines, he was deployed to the Middle East for service in the first Gulf war. (Tr. 53) He was discharged honorably and has remained in the active reserves. (GE 1)

Finances

Applicant first encountered financial difficulties in 2001. (Tr. 56) He attributed his difficulties to living beyond his means and becoming overextended. (Tr. 56) Once in 2001 he had eight credit cards. (Tr. 56) Now he has no personal credit cards. (Tr. 65) In

July 2006, creditor 1.a obtained a judgment against Applicant in the amount of \$4,766. (GEs 2-6; Tr. 60)) This judgment remains unsatisfied. (Tr. 60-61, 73-75)

Between 2001 and 2008, Applicant accrued three other delinquent debts: an \$11,388 debt with creditor 1.b on an account opened in April 2006; a \$9,030 debt with creditor 1.c on an account opened in April 2008; and a \$1,829 debt with creditor 1.d on an account opened in May 1997. (GEs 2 through 4) None of these debts have been satisfied to date. Applicant has not received any correspondence from any of these creditors since 2006. (Tr. 62, 78-79) Applicant cannot state with certainty when he last made a payment to any of these identified creditors. He believes he last made a payment to creditor 1.d in 2002. (Tr. 76) When he later returned to this creditor in 2002 or 2003 to discuss payment options, he was told by the creditor that it did not have the account anymore. (Tr. 78-79)

Contacting the retailer and bank covered by creditors 1.b and 1.c, respectively, in 2003 to explore payment options, he was informed by automated voice messages that each creditor had transferred its individual account to collection agencies. (Tr. 78-79) Once these debts became delinquent, Applicant made no manifest efforts to contact these creditors to make payment arrangements. (GE 5; Tr. 79-80) Applicant has not received credit counseling and has no documented plans to address his delinquent debts. (Tr. 63-64) Afforded an opportunity to develop a plan for repaying his debts, Applicant did not provide any evidence of payments or payment plans to address his listed debts.

Applicant nets approximately \$5,000 monthly with overtime. He maintains an average daily balance of \$7,154 in his checking account and reports a current balance of \$2,380. (AE C). His monthly expenses include a mortgage (\$873) and utilities (\$200). He reports \$3,000 in his savings account and \$14,172 in a money market account he retains. (AE C; Tr. 65-66)

Endorsements

Applicant is highly regarded by his coworkers. (AE A) A senior electronics installation manager who has known him for eight years and worked with him in two companies described him as a dedicated and trusted supervisor who has earned the respect of all who work with him. (AE A) Applicant documented numerous awards and commendations for his military service, which included service in the first Gulf war. (AE B; Tr. 53-54)

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 supervisor of a defense contractor who accumulated a number of delinquent debts over the last ten years. Applicant's 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." 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 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.

Without more historical explanations for the four major debt delinquencies Applicant has accrued since 2003 (including a judgment taken against him in July 2006), it is difficult to find either extenuating circumstances or concrete repayment steps sufficient to mitigate security risks associated with his delinquent debt accruals. To his

credit, he has obtained some financial counseling, but not enough documented efforts to credit him with the benefits 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.” Nor is there enough repayment evidence in the record to credit Applicant with the mitigation benefits of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

For the most part, Applicant’s accumulated debt delinquencies have not been substantively addressed in a number of years. Several of his debts may even be barred by his state’s statute of limitations. His state’s statute of limitations bars claims on written contracts that have been in delinquent status for more than four years. See *V. Code Ann.* § 8.01-228, *et seq.* (five years). Were he to initiate active steps to reaffirm the debts, he would risk validating the claims and tolling the statute’s potential bar to collection. Standing pat and letting the statute of limitations run on the three claims (creditors 1.a through 1.d) that exceed \$20,000 in overall debt makes some economic sense. But reliance on such an enforcement bar, while quite likely available to Applicant, is not a substitute for good-faith efforts to address outstanding debts.

Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated by the Appeal Board with good-faith efforts to repay overdue creditors. See, *V. Code Ann.* § 8.01-228, *et seq.* (five years). See, *e.g.*, ISCR Case No. 02-30304 at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 2001)). What constitutes a “good-faith” effort to repay overdue creditors requires a showing that “a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” See *id.* Summarized, an applicant must establish some kind of concrete plan for repaying the debt in issue besides relying on a legally permissible option like filing for Chapter 7 bankruptcy or taking advantage of a statute of limitations.

When addressing repayment efforts generally, the Appeal Board has not required an applicant to establish “that he has paid off each and every debt listed in the SOR.” See ISCR Case no. 07-06482 at 2-3 (App. Bd. May 21, 2008)(internal citations omitted). All that the Board has required is that the “applicant demonstrate he has a plan to resolve his financial problems and has taken significant actions to implement that plan.” See *id.* In Applicant’s case, it was incumbent upon him to demonstrate some tangible steps to satisfy his four delinquent debts with the monthly resources available to him from his checking, savings, and money market accounts. This he has not done to date, and, as a result, he is not able to satisfy any of the pertinent mitigating conditions.

Based on a whole-person assessment, Applicant fails to surmount the judgment questions raised by his accumulation of delinquent debts over an extended period of time while he was for the most part fully employed. His military awards and commendations, while impressive, are not enough to overcome judgment risks associated with his unresolved finances. On balance, Applicant has not shown sufficient tangible effort in addressing his debts to mitigate security concerns over his substantial debt accruals and demonstrate renewed control over his finances.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations, his military credits and his meritorious endorsement, it is still too soon to make safe predictive judgments about Applicant's ability and intentions 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.d.

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

Subparagraphs 1.a through 1.d : 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

