



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



In the matter of:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 10-00117

Appearances

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

November 15, 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 March 16, 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. DOHA acted 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 (AG).

Applicant responded to the SOR on April 5, 2010, and requested a hearing. The case was assigned to me on June 18, 2010, and was scheduled for hearing on July 1, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of four exhibits (GE). All of the Government's exhibits were admitted.

Applicant testified and offered 11 exhibits (AE), which were admitted. The transcript (Tr.) was received on July 28, 2010.

Procedural Issues and Rulings

Before the close of the hearing, Applicant requested leave to keep the record open to afford him the opportunity to supplement the record with an updated status report of his creditor 1.a judgment, his creditor 1.m debt, and his creditor 1.n debt. For good cause shown, Applicant was granted 2 days to provide post-hearing documentation. Department Counsel was given two days to respond.

Within the time permitted Applicant provided a cover letter, a letter from a credit consolidation firm, letters from creditor 1.c and 1.d requesting deletion of reported debts from Applicant's credit report (exs. N and O), and letters from credit reporting agencies reporting the deletion of listed debts associated with creditors 1.a, creditor 1.h, 1.j, 1.e, 1.m, and 1.n. Applicant's submissions are admitted as AEs L through R.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred an adverse judgment (subparagraph 1.a) in the amount of \$8,686 and (b) accumulated 13 delinquent debts exceeding \$20,000.

In his April 2010 response to the SOR, Applicant admitted some of the listed debts (debts covered by subparagraphs 1.b, 1.g, 1.j, 1.k, and 1.m), and denied others (subparagraphs 1.a, 1.d through 1.f, 1.h, 1.i, 1.l, and 1.n).

Findings of Fact

Applicant is a 35-year-old team leader for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant is married and has two children from his marriage, ages eight and five. (Tr. 49) He attended college between January 2003 and January 2006 and earned a bachelor's degree in science management. (ex. 1; Tr. 44-45) To finance his education he obtained student loans. (Tr. 45-46) His student loans totaling around \$30,000 are in deferred status, and are reported in current condition in his most recent credit report. (see ex. G; Tr. 46)

Financial history

In 2001, Applicant's wife experienced complications with her pregnancy. (Tr. 49-50) His insurance paid for only part of the medical charges associated with his wife's medical procedures, and Applicant became principally responsible for covering the remaining charges. (Tr. 49-50) After he lost his job in 2001, he could no longer cover his wife's medical bills. (see exs. 1 and 4) For a number of months, he and his wife "lived on

her salary only,” and struggled with their finances. (ex. 4) When he did return to full-time employment July 2002, his wife became unemployed, and once again, they were compelled to subsist on just one source of income. (see exs. 1 and 4) For some time, they made payments on their accounts only sporadically.

Applicant’s wife gave birth to a second son in 2005. This pregnancy did not involve any medical complications or uncovered expenses. Applicant’s wife is a medical technician for a local hospital. When working, she makes approximately \$12 an hour. (Tr. 51) She was unemployed for a six-month period in 2007. (Tr. 52) Between July 2002 and September 2003, Applicant worked for a service company and earned \$14 to \$15 an hour. (Tr. 52)

Beginning in early 2009, Applicant engaged successive debt consolidation firms (two in all) to assist hm in identifying delinquent accounts in his credit reports and restoring his credit. (see exs. F and K). He changed debt consolidation firms again in March 2010 (Tr. 62-63) and currently relies on his newest firm to process his debt payments and resolve his debts. (see exs. C and M; Tr. 63) Applicant believes his previous credit consolidation firm has paid some of his debts listed in the SOR. (Tr. 65-69) He documents payment of creditor 1.b (ex. H) and a payment agreement with a previous debt consolidation firm to satisfy his creditor 1.a judgment. (see ex. F) He also documents the removal of creditors 1.a, 1.c through 1.f, 1.h, 1.i; 1.j, 1.m, and 1.n from his latest credit reports. (see exs. D, E, and L through R; Tr. 74-77) His documented reports do not indicate whether any of the removed creditors were paid or resolved by other means, but reflect zero balances.

Applicant has a monthly net income of \$3,200. (see exs. 4; Tr. 81-82) His wife nets around \$1,500 a month from her job. (Tr. 80) Applicant estimated his total net monthly income to be around \$4,700. (Tr. 84) His monthly expenses seldom exceed \$3,200. (see ex. 4) These expenses include his home mortgage of \$1,486 a month. (Tr. 85) He has \$15,000 in retirement savings with his employer, and he is not aware of any delinquent debts. (Tr. 93) His latest credit reports list current education loans with creditor 1.a and no unsatisfied judgments or delinquent accounts covering any of his student loan debts. (see exs. E, I, and Q)

Endorsements

Applicant is well regarded by his supervisors and coworkers. He documents excellent performance evaluations for the years he has worked for his current employer. (ex. J)

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 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 concern is 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 to establish 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 civilian employee of a defense contractor who accumulated a number of delinquent debts after he became unemployed and his wife experienced medical complications with an earlier pregnancy that fostered unanticipated medical expenses. His financial difficulties raise security concerns under Guideline F. Since his wife returned to full-time employment, he and his spouse have made steady progress with their debts. They document the payment of one of their debts, an active agreement with a debt consolidation firm, and the removal of most of their listed delinquent debts.

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 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.

Since his wife returned to full-time employment, Applicant and his spouse have made steady progress with their debts. They document the payment of one of their debts, an active agreement with a debt consolidation firm, and the removal of most of their listed delinquent debts. Applicant is current with all of his reported student loan obligations and other creditors listed in his latest credit reports.

Evaluating his repayment efforts contextually, and given the difficult family and unemployment issues he and his wife have had to endure with his wife's two pregnancies, Applicant has made good progress in stabilizing his finances. Accordingly, he may be credited with serious, good-faith efforts to resolve his agreed debts through payments and filing removal requests with the credit reporting agencies relative to the listed creditors he disputes. He has regained control of his finances, and shows good promise for fulfilling his remaining debt obligations.

Based on his evidentiary showing, Applicant's proofs are enough 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 MC ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, untrustworthiness, or good judgment." See ISCR Case No. 09-08533 (Oct. 6, 2010); ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Considering the monetary resources he had to work with during his wife's pregnancies and work stoppages, there is little more that he could have been expected to initiate that he has not already accomplished.

Applicant may also claim the benefits of 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 many of the listed debts.

In balance, Applicant has shown good faith in addressing his debts since his wife returned to active employment with her current employer in 2008. 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 debts.

Based on a whole-person assessment, Applicant surmounts the judgment questions raised by his accumulation of a judgment associated with his student loan debt

and a host of other debts related to his wife’s pregnancy complications and employment losses by both marriage partners. His collective efforts to date reflect a “meaningful track record” of debt reduction and sufficient tangible effort in addressing his major debts to demonstrate restored control over his finances and mitigate the Government’s financial concerns. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)(internal citations omitted).

Taking into account all of the extenuating facts and circumstances surrounding Applicant’s debt accumulations, the limited resources he has had to work without his wife’s supplemental income, and the concerted steps he has mounted to address his debts (both his old ones and his current ones), 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.n.

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

Subparas 1.a through 1.n: 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

