



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-01178

Appearances

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

May 17, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his finances. Eligibility for access to classified information is granted.

Statement of Case

On July 23, 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 9, 2010, and requested a hearing. The case was assigned to me on December 8, 2010, and was scheduled for hearing on December 15, 2010. The hearing was convened on that date. At hearing, the Government's case consisted of four exhibits (GEs 1 through 4). Applicant relied on three witnesses (including himself) and nine exhibits (AEs A through I). The transcript (Tr.) was received on December 28, 2010.

Procedural Rulings

Before the close of the hearing, Appellant requested leave to supplement the record with documented payments of his remaining debts. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with payment documentation pertaining to a number of his listed creditors. Applicant's exhibits were admitted as AEs A-1 through H-2.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated eight delinquent debts exceeding \$31,000. In his response to the SOR, Applicant admitted five of the listed debts, and denied the remaining ones. He claimed he paid the debts he denied and plans to pay the remaining ones

Findings of Fact

Applicant is a 33-year-old engineering technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant graduated from high school in 1995 and enlisted in the Marine Corps right after graduation. (GE 1) He met his future wife in 1998, while he was still in the Marine Corps, and married her in July 1998. (GE 1; Tr. 68) He has two children from this marriage for whom he is financially responsible. (GE 1; Tr. 75)

Following his discharge from the Marine Corps in September 1999 (GEs 1 and 4), Applicant and his wife moved to another state (State 1). For the first six months (between March 2000 and September 2000), he drove a truck as a driver trainee. (GE 1) He drove a truck for two other companies between September 2000 and March 2007. (GE 1)

Between March 2007 and December 2007, Applicant owned and operated his own flooring business in State 1. (GEs 1 and 4) In this business he operated, he netted around \$1,700 a month for the first few months and prospered. He had good credit

during these opening months and was current with all of his bills. (GE 1; Tr. 67-68) When his business slowed in late 2007, he took home less than \$300 a month. (Tr. 67-68, 82-86) With a wife and two children to care for, Applicant encountered difficulties in paying his debts. (Tr. 84-86) To please his wife, they returned to his current state of residency (State 2) in December 2007. (GEs 1 and 4) Within weeks of their return to State 2, she began seeing another man and abandoned Applicant. (GE 4; Tr. 74, 83-84)

In June 2008, after struggling for several months with part-time work and children to care for, Applicant made a decision to return to State 1. (GEs 1 and 4; Tr. 85-86) In the same month, Applicant's wife reconciled with him, and they returned together with their children to State 1 where he reestablished his flooring business and refurbished their home. (GE 4; Tr. 69, 85) Beset with growing financial problems associated with his slowing floor business, Applicant and his wife returned again to State 2 in August 2009. (Tr. 69, 86) Shortly after his return, he went to work for his present employer. (Tr. 69-70, 86-87) His wife has not worked due to a disability problem with one of their children. (GE 4; Tr. 90)

Applicant attended college in the east in 2005. Since August 2009 he has been attending college locally on a full-time basis in hopes of earning a bachelor's degree in computer science. (GE 4; Tr. 87) He has maintained good grades in his computer science curriculum. (GE 4)

Applicant's finances

Applicant's credit reports and interview summaries reveal that he accrued significant debts between late 2007 and August 2009 due to business-related income reductions. His credit reports reveal collection and charged off accounts with the following creditors: creditor 1.a (\$658); creditor 1.b (\$535); creditor 1.c (\$811); creditor 1.d (\$1,073); creditor 1.e (\$16,000); creditor 1.f (\$2,825); creditor 1.g (\$10,082); and creditor 1.h (\$995). See GEs 2 through 4.

Applicant documents his payment of a number of his listed debts. (AEs A through H, J through N, Q, and R; Tr. 91-102) Specifically, he documents settling the following debts: his creditor 1.a debt with a \$511 check in June 2010 (AEs A and K); his creditor 1.b debt with a \$375 check in September 2010 (AEs B and L); his creditor 1.c debt with a \$226 check in August 2009 (AEs C and M); his creditor 1.d debt with a check of \$268 in March 2010 (AEs D, N, and P); his creditor 1.f debt with a check of \$2,441 in September 2010 (AEs E, M, and P); and his creditor 1.h debt with a check of \$687 in September 2010. (AEs F and R) This leaves his debts with creditors 1.e and 1.g still unpaid.

Applicant's charged-off creditor 1.e debt represents a \$16,000 delinquency balance arising from a line of credit Applicant arranged on his home in June 2007. (GEs 2 and 3) This line of credit enabled Applicant to draw funds for improvements on his home. (GE 4) When he defaulted on the loan in October 2008, the lender charged off the \$16,000 balance and never attempted any enforcement action against Applicant.

(GEs 2 and 3) In an interview with an investigator from the Office of Personnel Management (OPM) in November 2009, Applicant summarized the details of his line of credit and committed to taking care of the bill “as soon as possible.” (GE 4)

Before the issuance of the SOR, Applicant made contact with this creditor to explore repayment arrangements. (GE 4) In December 2010, he worked out a payment plan with this lender that permitted him to resolve the debt with monthly payments of \$150. (AEs J and O) He documents his first \$150 payment under this payment arrangement in December 2010. (AE O)

Applicant’s other remaining debt is a deficiency balance that remained after his repossessed vehicle was sold at a public auction in 2009. Applicant had purchased the truck for his business in July 2007 for around \$19,000. (Tr. 103) After his flooring business failed later that year, he encountered difficulties making the \$320 monthly payments with his part-time work and asked the lender in November 2007 to pick up the truck. (Tr. 104-105) Later, he was notified by the lender that the truck produced \$6,000 from the public sale, leaving a deficiency of \$10,082. (GE 2; Tr. 107) In his interview with an investigator from OPM in November 2009, he recounted the details of his truck purchase and subsequent repossession and promised to “take care of this bill as soon as possible.” (GE 4) Applicant made contact with this creditor before the issuance of the SOR in an attempt to resolve the outstanding deficiency. (GE 4)

Creditor 1.g currently reports a \$12,116 deficiency balance owing on the debt (inclusive of accumulated interest) and has agreed to accept a lump-sum settlement payment from Applicant of \$5,530. See AE Q; Tr. 101, 108. To date, Applicant has not made any arrangements to accept this creditor’s settlement offer, but maintains close contact with the creditor. (GE 4) He commits to accepting the creditor’s offer as soon as he is able to raise the required \$5,300 lump sum.

Applicant currently nets close to \$3,000 a month with his recent raise. (GE 4; Tr. 88-89) This represents an increase of around \$300 over his reported income in June 2010. He reports unchanged monthly expenses of \$1,669 and a net monthly remainder of close to \$1,000. (GE 4; Tr. 90) He is in good standing with his current creditors and is firmly committed to stabilizing his finances. (GE 4)

Endorsements

Applicant is well regarded by his employer’s managers and colleagues as an engineering technician. (AE I; Tr. 56-64) They consider him reliable and trustworthy in his work assignments.

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, revoked, 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 factors are pertinent:

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.

Adjudication Guidelines, ¶ 18.

Burden of Proof

By virtue of the precepts 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 common sense 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 adversary 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 any controverted facts alleged in the Statement of Reasons 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 persuasion 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.

Analysis

Applicant is a well-regarded engineering technician for a defense contractor who accumulated a number of delinquent debts after his flooring business failed to prosper as he had anticipated. His major debts include a charged-off line of credit (since covered by a modest monthly repayment plan) and a deficiency balance on a repossessed truck he had purchased for his business. Applicant has since paid all of his smaller delinquent debts (over \$6,500 of aggregate payments) in the year following his return to full-time employment and remains liable for debts owed to creditors 1.e and 1.g.

Security concerns are raised under the financial considerations guideline of the AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness, and ability to protect classified information, and place the person at risk of having to engage in illegal acts to

generate funds. Applicant's accumulation of delinquent debts and his past inability to pay these debts in a timely way 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 mostly attributable to his failed flooring business, which caused him to get behind in some of his debts and default in others. Since he has returned to work full time, he has repaid four of his six listed defaulted debts and has since worked out a repayment arrangement covering his charged-off line of credit (\$16,000) with creditor 1.e. Only his creditor 1.g account with the lender who financed his truck purchase remains unresolved. Applicant has committed to paying this debt and accumulating funds monthly with his remainder to meet creditor 1.g's lump-sum \$5,530 settlement offer.

Based on his evidentiary showing, extenuating circumstances contributed to Applicant's inability to stay current with his debts. His extended income losses from his flooring business is the primary contributing factor to the financial problems that beset him in the 2008-2009 time frame. The downturn he experienced in his business left him with insufficient resources to stay current with some of his major creditors. Available to Applicant is ¶ 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 responsible under the circumstances." While some judgment problems persist over Applicant's taking on so much personal and business risk with a wife and children to care for and major house and vehicle loans to repay, his actions are considerably extenuated by unforeseen economic conditions that prevented his curing the defaults once they were placed in delinquent status and charged off.

In recognition of the good-faith efforts Applicant made to resolving his outstanding debts with his four smaller creditors, and arranging monthly payment arrangements with his largest creditor (creditor 1.e), mitigation credit is available to him. All but two of his debts have since been repaid, and he was able to arrange a repayment plan with his equity line lender. To his credit, he has mounted major communication initiatives with all of his creditors and has elicited a one-time lump-sum payment option from one of his remaining creditors (creditor 1.g) to resolve this outstanding debt.

Applicant's good-faith repayment efforts to date merit the application of two of the mitigating conditions for financial considerations: ¶ MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," and ¶ MC 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire

trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases.

Consideration of Applicant's background and circumstances surrounding his situation permits extenuation and considerable mitigation of his accumulated delinquent debts. Extenuating conditions associated with his taking on too much business risk with his flooring business and his significant family obligations all contributed to his inability to meet his financial obligations with his creditors. Since returning to work on a full-time basis, he has mounted aggressive efforts to repay his creditors while taking care of his wife and attending college on a full-time basis.

From a whole-person standpoint, the evidence is substantial that Applicant has initiated good-faith efforts to resolve his debt delinquencies. Since his return to State 2 in August 2009, he and his wife have lived frugally and responsibly. While he retains some exposure to enforcement actions by one creditor holding a deficiency claim on his repossessed truck, the risks of debt enforcement against him appear to be low at this time. He has been in touch with this creditor and is saving funds to meet the creditor's lump sum settlement requirements to settle the outstanding deficiency balance claimed by this creditor (creditor 1.g).

Taking into account all of the extenuating facts and circumstances surrounding Applicant's delinquent debt accruals, and the good-faith efforts he has mounted to resolve them, Applicant successfully mitigates judgment, reliability and trustworthiness concerns related to his debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

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 1.h: 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

