



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 10-01343

Appearances

For Government: Caroline. H Jefferies, Esquire, Department Counsel

For Applicant: *Pro se*

March 28, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted

Statement of Case

On July 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 (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on August 6, 2010, and requested a hearing. The case was assigned to me on October 18, 2010, and was scheduled for hearing on November 17, 2010. The hearing was convened on that date. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and six exhibits (AEs A-F). The transcript (Tr.) was received on November 29, 2010.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated four debts: (a) two consumer debts approximating \$2,400 and (b) two mortgage-related debts. One of the alleged mortgage debts is a charged off mortgage debt in the amount of \$59,425, and the other is a mortgage account in delinquent status (over 120 days delinquent) in the amount of \$27,952, with a total loan balance of \$212,000.

In his response to the SOR, Applicant admitted one of the alleged debts (his debt covered by subparagraph 1.c), but denied the remaining three alleged debts. He claimed that two of the alleged debts are being paid off by his wife in monthly installments and the third debt is the subject of ongoing mortgage loan modification negotiations with the creditor. Applicant claimed he has been making regular payments on three of the listed debts to the best of his ability and got behind in his debts after his employer eliminated overtime for himself and his wife lost much of her client base due to a sagging economy.

Applicant claimed in his response that he fully intends to repay all of his debts and has the financial means from his work to make the payments needed to resolve his current financial situation. He claimed 20 years of active military service and unchanged positive values and integrity from his enlistment tenure in the Air Force.

Findings of Fact

Applicant is a 52-year-old metals technician 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 graduated from high school in 1976. (GE 1) He has no reported college credits. He enlisted in the Air force (AF) in February 1984 and served 17 years of active duty before he was honorably discharged in March 2001. (GE 1) Applicant married his first wife in February 1977 and has two children (ages 33 and 31) from this marriage. (GE 1) He divorced his first wife in June 1983 and remarried in November 1984. He has one child (age 25) from his second marriage and divorced his second wife in November 1996. (GE 1) Applicant remarried for the third time in June 2004. He has no children or stepchildren from this marriage.

In June 2005, Applicant opened a credit card account with creditor 1.a. He opened a second credit card account in June 2005 with creditor 1.b. Credit reports show

he defaulted on his creditor 1.a account in April 2009, and the account was charged off in December 2009. (GEs 3 through 5) In August 2009, Applicant defaulted on his creditor 1.b account; this account was charged off in January 2010. (GEs 3 through 5)

In approximately 2000, Applicant purchased a home and financed the purchase with a \$100,000 first mortgage from creditor 1.d with no money down. See GE 2; Tr. 31-32. His mortgage called for payments of \$900 a month. (GE 2; Tr. 33) In June 2005, he and his third wife refinanced their home with creditor 1.d with a \$170,000 first mortgage on the property. Eight months later, they refinanced their home again with creditor 1.d and this time placed a \$210,000 first mortgage on the property. (GE 2; Tr. 32) Monthly payments on the loan ranged between \$1,300 and \$1,500. (Tr. 33) Credit reports and interview summaries do not show how Applicant and his wife disposed of the loan funds not needed to pay off the prior first trust deed. Credit reports reflect loan distributions in excess of \$100,000 over the pay-off of the original \$100,000 loan. See GEs 3 through 5.

Applicant and his wife obtained additional financing on their home in 2007 from a home equity loan with creditor 1.c. (Tr. 30-31) Credit reports show they obtained a second mortgage on the property with creditor 1.c in the approximate amount of \$60,000. (GEs 3 through 5; Tr. 31, 35) Applicant used the proceeds from the loan to refurbish and remodel his home and pay off a truck loan. (Tr. 31)

In late 2008, both Applicant and his wife began experiencing budgetary constraints from significant work-related reductions in their income. (Tr. 26-29) By early 2009, they had missed monthly payments on his second mortgage and his credit card accounts. And by March 2009, he and his wife had fallen behind in most of their consumer accounts and their two mortgages. (Tr. 29-30, 44)

Concerned about their income losses and creditors, Applicant and his wife contacted a consumer advocacy group the same month. In turn, they paid the firm \$3,500 for their services in contacting his creditors to explore payment arrangements he could handle. (GED 2) At the time, he could not afford the offered payment arrangements from creditor 1.d, but was successful in making payment arrangements with creditors 1.a and 1.b.

Applicant documents payment in full of his creditor 1.a account (GEs 2 and 4 and AEs E and F; Tr. 38) and a reduced balance of \$673 on his creditor 1.b account. See AE F; Tr. 39. Addressing his first mortgage delinquency with creditor 1.d, Applicant completed a loan modification agreement with creditor 1.d in August 2010. (AE A) Under the terms of his loan modification agreement, Applicant rolled his past-due balance (around \$28,000) into a new consolidated principal balance of \$241,942. (AE A) Monthly payments under his modification agreement are \$909 (sharply reduced from the \$1,319 monthly payment terms of his old loan agreement). His bank statements reflect that he has made regular \$1,000 monthly payments to creditor 1.d since finalizing his modification agreement. (AEs E and F; Tr. 41-42, 48-49)

Recently, Applicant initiated repayment arrangements with creditor 1.c and has made two \$255 payments to the firm that represents this creditor holding the second trust deed on Applicant's residence. See AE A; Tr. 38-39. Applicant hopes to increase the size of his monthly payments to the firm once he has completed six monthly payments and establishes a payment track record. (Tr. 39, 47) Applicant's payment plan with this firm is a credible one and warrants acceptance of his efforts and commitments to creditor 1.c to date.

Applicant currently nets around \$2,600 a month; while his wife nets around \$2,000 a month. (GE 2; Tr. 37-38) Applicant and his wife spend approximately \$1,900 a month on household expenses and about \$1,200 a month on his listed debts. See GE 2 and AEs B and F)

Applicant is well regarded by his supervisors and coworkers. (AE C) His immediate supervisor is a retired AF SMSgt and has worked with Applicant for the past 11 months. He characterized Applicant as honest, dependable, conscientious, and trustworthy. (AE C) He cited Applicant's awards for his dedication and support of DoD programs and his many leadership contributions to his team's aircraft maintenance shop. His employer's aircraft maintenance manager and former AF colleagues were equally effusive in his praise of the former's contributions and trustworthiness. (AE 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." 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 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

By virtue of the precepts framed by the revised Adjudicative Guidelines, 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 highly-regarded metals technician for a defense contractor who accrued several delinquent debts after he and his wife experienced work-related income reductions in late 2008. Two of the debt delinquencies involved first and second mortgages on a home he purchased in 2000 and refinanced in 2005 and 2006. Faced with reductions in their family income, Applicant and his wife fell behind in their payments to their creditors.

By defaulting on their two credit card accounts (creditors 1.a and 1.b) and mortgages on their home, Applicant and his wife exposed themselves to potential charge offs and enforcement action. Without resolution, these four major debts raise security concerns over the potential of future enforcement actions by the credit card creditors and junior and senior mortgage holders or their assignees.

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 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."

Once Applicant and his wife encountered difficulties staying current with their debts, they employed the services of a consumer advocacy group to work out acceptable payment arrangements with their creditors. Their success with this firm was limited. While they were able to establish workable payment arrangements with creditors 1.a and 1.b, they could not afford the payment plans offered from by their home lenders.

Based on his evidentiary showing, extenuating circumstances certainly contributed to Applicant's becoming delinquent on two of his credit card accounts and on his two mortgages. Reduced family income and an inability to complete sensible loan modification arrangements with his lenders were primarily responsible for Applicant's delinquencies and ensuing delays in resolving them. 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 responsibly." While some judgment problems persist over Applicant's taking on so much debt through his refinancing and home equity initiatives, his actions

are considerably extenuated by unforeseen economic conditions and his inability to obtain a modification agreement in the 2009 time frame.

In recognition of the earlier counseling and repayment initiatives Applicant and his wife mounted in 2009 with the consumer advocacy group, some mitigation credit is available to him. His consumer debts are addressed by 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,” ¶ 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,” and ¶ MC 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” None of the cited mitigating conditions are dispositive, but they do have some applicability to Applicant’s situation.

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 (as here).

Consideration of Applicant’s background and circumstances surrounding his situation permits extenuation and mitigation of his delinquent credit card and mortgage debts. Extenuating conditions associated with his loss of family income temporarily impaired his ability to meet his financial obligations with his credit card obligees and lenders. And he is able to document his payoff of his creditor 1.a account and his substantial pay-down of his creditor 1.b. account. Addressing his two mortgage lenders, he establishes that he brought his creditor 1.d first mortgage current with the aid of a modification agreement, and is making payments to the lender agents of creditor 1.c.

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, he has been able to document payment in full of one of the covered debts and has established sound repayment plans with two of his remaining creditors (creditors 1.b and 1,d). All that remains to firmly resolve is the creditor 1.c second mortgage that Applicant obtained in 2007. While he has not been able to work out a definitive repayment plan with creditor 1.c, he has been in contact with the creditor’s legal agents and is making \$155 monthly payments. His repayment efforts to date are sufficient to entitle him to full application of the mitigating conditions of the financial guideline.

From a whole-person standpoint, there is certainly no evidence presented that Applicant is currently living beyond his means in his present circumstances. He and his wife sought counseling when they fell behind with their debts, and have either paid or are repaying each of their cited delinquent debts. Applicant worked with a security clearance during his many years in the AF and displayed reliability and trustworthiness in his active duty AF service, as well as in his civilian-duty-assignments. Applicant is a highly regarded technician who is consistently relied upon by his superiors and coworkers for both his technical and leadership skills.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's accrual of delinquencies in two of his credit card accounts and his two mortgages, and the initiatives he has taken to repay his creditors, he 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.d: 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

