



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-01656

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

January 24, 2012

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, items, and legal arguments presented, Applicant does not mitigate financial consideration security concerns. Clearance is denied.

Statement of Case

On March 25, 2011, 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 for SORs on September 1, 2006.

Applicant responded to the SOR on April 16, 2009, and elected to have his case decided on the basis of the written record. Applicant received the file of relevant

material (FORM) on May 26, 2011, and did not respond with any information. The case was assigned to me on August 16, 2011.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have accumulated 15 delinquent debts, exceeding \$64,000 as follows: creditor 1.a (\$212); creditor 1.b (\$90); creditor 1.c (\$293); creditor 1.d (\$9,745); creditor 1.e (\$8,356); creditor 1.f (\$20,148); creditor 1.g (\$976); creditor 1.h (\$568); creditor 1.i (\$11,000); creditor 1.j (\$251); creditor 1.k (\$168); creditor 1.l (\$1,632); creditor 1.m (\$784); creditor 1.n (\$374); and creditor 1.o (\$519).

In his response to the SOR, Applicant admitted most of the debts, but denied others (i.e., creditors 1.g through 1.l and creditor 1.o). He provided no explanations.

Findings of Fact

Applicant is a 36-year-old security guard 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 has been married to his spouse since April 1996 and has no children from this marriage. (Item 7) He has no military experience. (Item 7) Applicant attended an accredited university between September 1994 and December 1994, but has no certificate or degree from this institution.

Applicant accumulated a number of delinquent debts between 2006 and 2009. His listed delinquencies are documented in both of his credit reports and exceed \$64,000 in aggregate indebtedness. (Items 5 and 6) Three of these debts (exceeding \$29,000 in the aggregate) represent deficiency balances on repossessed vehicles.

Applicant's largest listed debt (with creditor 1.f) represents a deficiency owing on a repossessed mobile home in the listed amount of \$20,408. He once occupied this home. Investigating a leak "from a big rain shower, he detected water leaking into the ducts that were in the floor and found mold growing in the area. ((Item 7) This mold was causing his family to get sick. Because of the excessive mold in the home, Applicant and his family abandoned the home and ceased paying on his mortgage. Since repossessing the home, the lender has not moved it. (Item 7)

Creditor 1.h and creditor 1.o reflect claimed duplicate debts that carry separately reported accounts in Applicant's credit reports. (Items 5 through 7) Applicant acknowledged responsibility for both of these debts in his interrogatory responses and provided no explanatory materials to document his claims.. (Item 7) The debts in the credit reports reflect separate accounts that remain outstanding. The attached letter to Applicant's attorney from creditor 1.h of August 2010 confirmed only that the creditor had closed the account and no longer was exercising collection action. (Item 2). The creditor's letter contained no payment or settlement initiatives involving Applicant. For payment purposes, the creditor 1.h debt remains unsatisfied.

Applicant provides no explanations for his debt difficulties. His security clearance application reports continuous employment between August 2007 and September 2009. (Item 4) His personal financial statement reports net monthly income of \$2,552, monthly expenses of \$2000, and a net monthly remainder of \$552. (Item 7) Without more financial information from Applicant about himself and his spouse during the pertinent period of reported debt delinquencies, his monetary circumstances cannot be properly evaluated.

Afforded an opportunity to supplement the record, Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions.

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 guidelines 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

Under 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.

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 guard of a defense contractor. Between 2006 and 2009, he accumulated a number of delinquent debts (including deficiency balances resulting from several vehicle repossessions). His accumulation of delinquent debts and his

past inability and unwillingness to address 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.”

Applicant’s pleading admissions of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s listed debts are fully documented in his latest credit reports and provide ample corroboration of his debts. His listed debts remain unpaid and unresolved by voluntary means.

Based on the documented materials in the FORM, no extenuating circumstances are associated with Applicant’s inability to pay or otherwise resolve his debts. Moreover, some judgment problems persist over Applicant’s unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts once the underemployment conditions that contributed to the delinquencies had passed or eased, and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he has failed to address them in any tangible way. Mitigation credit is not available to Applicant based on the evidence developed in this record.

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 imposes 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).

While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases. Failure of the applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts, which remain unpaid and unresolved. Endorsements and performance evaluations might have been helpful in making a whole-person assessment of his overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant’s debt accumulations, his lack of any exhibited explanations for his debt accruals, and his failure to provide any proof of corrective actions taken to address his

