



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-03663

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

January 18, 2011

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 July 26, 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), and implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on August 3, 2010. The case was assigned to me on September 27, 2010, and was scheduled for hearing on October 28, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case

consisted of five exhibits (GEs 1-5). All of the Government's exhibits were admitted. Applicant relied on two witnesses (including himself) and six exhibits (AEs A-F), which were admitted. The transcript (Tr.) was received on August 5, 2010.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated two delinquent debts, which together exceed \$36,000. In his response to the SOR, Applicant admitted the first debt, and denied the second one (claiming he settled the debt).

Findings of Fact

Applicant is a 53-year-old system engineer for a defense contractor who seeks a security clearance. The allegation covered in the SOR and admitted by Applicant is adopted as a relevant and material finding. Additional findings follow.

Background

Applicant earned an Associate's degree from an accredited community college in June 1996. (GE 1; Tr. 43-44). He married his first and only spouse in March 1985. He and his spouse initiated divorce proceedings for non-financial reasons in 2005. (Tr. 33) According to his security clearance application (e-QIP), their divorce was finalized in October 2007. (GE 1) He has one stepchild from this marriage (age 29), but no children born to Applicant and his ex-wife. (Tr. 42-43)

Between 1975 and 1981, Applicant served in the U.S. Air Force. (GE 1) He received an honorable discharge in June 1981. (GE 1) Following his Air Force discharge, Applicant worked for a defense contractor as an antenna mechanic and subsystem engineer for about 20 years before leaving the state for other opportunities. (Tr. 44) After experiencing a layoff with his new company in 2002, he and his wife returned to their state of origin before their relocation. (Tr. 45-46).

Applicant's finances

For the most part, Applicant was able to keep up with his bills (even during his short layoff in 2002) after his Air Force discharge. (GE 4; Tr. 45-46) Faced with a large tax obligation, they opted to pay their IRS tax obligation first, and live off of their credit cards in the short term. In the process of living on their credit cards, they accrued more credit card debt than they anticipated. (GE 4)

During their marriage, Applicant deferred to his wife to manage their finances and pay their bills. (Tr. 46) At no time during their marriage did Applicant and his wife seek financial counseling. (Tr. 47)

Before the finalization of their divorce in 2007, Applicant's wife told him she was filing for personal bankruptcy. Applicant found a number of his ex-wife's scheduled debts were marital debts. Since he chose not to pursue personal bankruptcy relief, he

remained legally responsible for the debts, once his ex-wife received her bankruptcy discharge. (Tr. 34)

Without informing Applicant, his ex-wife opened a credit card account with creditor 1.a in May 1994. (see GEs 2, 4, and 5) This account became delinquent after their separation. Following his ex-wife's bankruptcy discharge, creditor 1.a made a settlement offer to Applicant to pay off this \$10,336 debt. Applicant provided documentation at the hearing of his settlement offer made to the creditor in August 2010 (see AE B), and his ultimate settlement arrangement with this creditor on this outstanding debt. (see AE C; Tr. 40-41) Under the terms of the payment agreement he reached with this creditor in August 2010, Applicant is making monthly payments of \$175. (AE C) This monthly payment stream is scheduled to continue for 24 months, after which Applicant's scheduled payments will increase to \$310 a month. (AE C)

Besides the creditor card account she opened with the creditor covered in subparagraph 1.a, Applicant's wife opened a second credit card account with the same creditor in June 1995. (see GEs 2 and 4) This account is not covered in the SOR. Applicant believes his ex-wife listed this debt in her bankruptcy schedules. But after she received her discharge, the creditor looked to Applicant as a co-obligor on this account as well. (Tr. 34-35) In January 2009, Applicant contacted this creditor's collection agent to explore ways of settling this identified account. (GE 4) Acting through its collection agent in a January 2009 letter to Applicant, this creditor presented Applicant with a settlement offer. In this settlement offer, the creditor communicated its willingness to accept a lump-sum payment of \$3,486 in full settlement of the debt. (AE A; Tr. 35-36) The creditor conditioned its settlement offer upon Applicant's showing of acceptance by transmitting his payment by January 30, 2009. Applicant documents his timely payment of this account in full. (see AE A)

Sometime in 1988, Applicant and his wife opened an account with creditor 1.b. (see GEs 2, 4 and 5) Before he was asked about the account in a scheduled interview with an agent of the Office of Personnel Management (OPM) in February 2010, Applicant was not familiar with the nature of the debt, or the balance due on the account. After the interview, Applicant made contact with creditor 1.b. Applicant's efforts produced a settlement offer from the creditor in July 2010. (see AE D) This settlement offer consisted of the creditor's willingness to accept a lump sum payment of \$8,000 in full settlement of the outstanding debt. (Tr. 40) The creditor set a July 23, 2010 deadline for Applicant's acceptance of the offer. (AE D) Within the time permitted, Applicant tendered a check in the amount of \$8,000 in full satisfaction of the creditor 1.b debt. (AE D)

Since 2009, Applicant has been generally able to stay current with his bills and keep his finances in order. (Tr. 47) His most recent credit report reflects current balances with all of his listed creditors. (see AE F) He currently nets \$2,700 a month and has monthly expenses of \$2,677. (AE F) This leaves him with a small positive remainder.

Applicant assured he was not aware of any applicable statutes of limitation on any of his old marital debts and simply wants to pay them off. (Tr. 48) He has no knowledge

of any outstanding debts his wife accrued before she petitioned for Chapter 7 bankruptcy protection. (Tr. 49)

Endorsements

Applicant is well-regarded by his supervisors and co-workers (Tr. 54-56) A co-worker who has known Applicant for 27 years described him as dependable and reliable. This colleague, who himself has held a security clearance since 2006, recommends Applicant to a position of trust. (Tr. 55-60)

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 system engineer of a defense contractor who accumulated two major marital debts prior to his separation and divorce in 2007. Because his wife (by herself) filed for personal bankruptcy in 2005, and received her discharge, creditors 1.a and 1.b pressed Applicant for payment of the debts. Although these two listed debts are likely barred by his state's statute of limitations, Applicant has

never sought to rely on any statute of limitations bar to avoid responsibility for these two debts. Because of their size, the two listed delinquent debts raised initial security concerns.

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." Although his ex-spouse bears considerable responsibility for these debts, her no-asset bankruptcy left Applicant as the only remaining obligor subject to any potential legal recourse.

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 her 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.

Addressing his two listed debts, Applicant documents his repayment of both debts. He has a good-faith repayment arrangement in place with his subparagraph 1.a creditor, and he has paid off his creditor 1.b debt in full. He documents three good-faith payments toward the discharge of his creditor 1.a debt and shows good promise of fulfilling his remaining payment responsibilities. Applicant is current with his all of his debts and has kept his finances in stable order since at least 2009. Evaluating all of his repayment efforts contextually, and considering the extenuating circumstances associated with his divorce and his loss of a potential sources of financial assistance, Applicant may be credited with considerable progress to date in regaining control of his finances.

Based on his evidentiary showing, Applicant's proofs are sufficient 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(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 apply to Applicant's situation, considering (a) his initial difficulties in identifying the debts following his divorce and his wife's bankruptcy, and (b) his substantial repayment efforts after being alerted of outstanding balances with

creditors 1.a and 1.b and satisfying himself that the listed debts belonged to him as reported.

Based on a whole-person assessment, Applicant surmounts the judgment questions raised by his accumulation of two substantial marital debts during his 21-year marriage to his ex-spouse. When alerted to the two debts that were discharged in his ex-wife's bankruptcy without payment, Applicant accepted responsibility for these aged and time-barred debts and completed repayment arrangements with the two creditors. His positive endorsement from his co-worker and colleague of over 27 years merits considerable praise and commendation. In balance, he has shown sufficient tangible effort in addressing his two major debts to mitigate his listed delinquent debts and demonstrate restored control over his finances. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a and 1.b.

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 and 1.b : 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

