



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-05831

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

06/18/2012

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 November 9, 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 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, 1962), as amended (Directive), and the Adjudicative Guidelines (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on November 29, 2011, and requested a hearing. The case was assigned to me on March 22, 2012, and was scheduled for hearing on May 10, 2012. 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 four exhibits (AEs A-D). The transcript (Tr.) was received on May 17, 2012.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documentation of his marriage dissolution settlement. There being no objection from Department Counsel, and for good cause shown, I granted Applicant seven days to supplement the record. I also granted Applicant's request for a seven-day extension. Within the time permitted, Applicant supplemented the record with his dissolution of marriage judgment, filed in September 2008. I admitted his submission as AE E

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts, exceeding \$35,000. In his answer to the SOR, Applicant admitted the allegations covered by paragraphs 1.a through 1.e without explanation.

Findings of Fact

Applicant is a 34-year-old help desk analyst 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 married in October 2004, and has one son (age six) from this marriage. (GE 1; Tr. 46) He became a licensed registered nurse (RN) in 1997. (GE 1)

Following his graduation from high school in June 1996, Applicant worked for about a year before enlisting in the Navy in August 1997. As a Navy enlistee, he served ten years of active duty before receiving his honorable discharge in October 2007. (GEs 1 and 2) Applicant is currently enrolled in college and expects to earn a bachelor's degree in information technology management within the next 12 to 18 months. (Tr. 36, 39-40)

During his enlistment, he was deployed abroad on multiple occasions. He was deployed in 1998 and in 1999. (Tr. 26) He was deployed again in 2001. (Tr. 26). During his third deployment he met his wife. (Tr. 26) In 2006, Applicant deployed in support of Iraqi Freedom and Enduring Freedom. (Tr. 26) When he returned to port, he learned his wife was cheating on him and was addicted to methamphetamine. (Tr. 26-27, 44-45)

Soon after his Navy discharge in 2007, Applicant and his wife separated. He divorced his wife in September 2008. (AE E; Tr. 48) Under the terms of his divorce, he was awarded full legal custody over his minor child. He and his son currently reside with Applicant's mother. (AE E; Tr. 48-49)

Applicant's Finances

Before his marriage, Applicant enjoyed good credit and stable finances. (Tr. 43) While deployed in 2006, his wife opened two credit card accounts with the creditor identified in subparagraphs 1.a and 1.b. (Tr. 27, 44-45) Both accounts were opened under a power of attorney he granted to his wife. (Tr. 45) When he returned from his 2006 deployment, he learned of his wife's opening the two accounts and charging purchases exceeding \$800. (Tr. 44-45) By the time he learned of the debts, the balances on the two accounts had escalated to \$9,100 and \$2,300, respectively. (GEs 3-5; Tr. 46)

Following his discharge from the Navy, Applicant encountered difficulty finding work and incurred considerable credit card debt. (Tr. 31-32) He was unemployed for almost nine months before he found employment, and paid little attention to his debts during this period. (Tr. 33) After finding a temporary job in November 2008, he accumulated a little money to address his debts. (Tr. 32-33) Following his lay-off from this temporary job in February 2009, he found another temporary job, which lasted about three-and one-half months (March 2009 through July 2009) before his employer closed its offices. (Tr. 33-35) Once again, Applicant became unemployed and remained out of work this time for more than six months. (Tr. 35) He did not become gainfully employed again until January 2010. (Tr. 36)

Under the terms of his divorce judgment, Applicant gained full custody of his son. (AE E; Tr. 29-30) In their division of property, the court assigned the two credit card debts (creditors 1.a and 1.b) to Applicant's spouse. (AE E) To the extent Applicant paid any of these assigned debts, he became entitled to full reimbursement from his spouse. (AE E) When his wife did not address either of the creditor 1.a and creditor 1.b debts following their divorce, Applicant accepted responsibility for them. (Tr. 30-31) Besides assigning the two credit card debts to his ex-spouse, the court imposed child support payment responsibilities on her as well. Currently, his ex-wife contributes \$221 in monthly child support payments. (AE E; Tr. 48-49)

More recently, Applicant paid his creditor 1.d debt with a lump sum \$1,522 payment in full settlement of the debt (AE D) and his creditor 1.e debt with a full payment of \$105. (AE C) Further, he settled his debts with creditors 1.a and 1.b with individual payment plans. (AEs) In May 2012, he entered into payment agreements with the collection agent of the creditor covered by subparagraphs 1.a and 1.b. (AEs A and B) Under the terms of his settlements, Applicant agreed to pay \$50 a month each month to each of the two listed accounts until they are fully paid. He will be making his agreed monthly payments to the collection agent for these creditors and hopes to

increase his monthly payments in six months. (Tr. 30, 50-51) He expects to pay off these debts by late 2012 or early 2014. (Tr. 30-31, 41-42)

The only debt that Applicant has not individually addressed is his debt with creditor 1.c for \$21,836. This debt represents the deficiency balance following the repossession of his vehicle in 2008. (Tr. 37-38) The deficiency balance remains unsatisfied. (AE D; Tr. 38) Applicant accepts responsibility for the deficiency and is committed to repaying this debt. He hopes to be able to address this debt next year when he expects his available income sources to improve. (Tr. 38, 42)

Applicant documents net monthly earnings of \$4,682 and monthly expenses of \$3,445. (GE 2) He reports a net monthly remainder of \$1,240. (GE 2) and is further aided by the child support payments recently initiated by his ex-wife.

Endorsements

Applicant is well regarded by his command. (Tr. 57-58) During his Navy enlistment, he earned numerous decorations commemorating his service. His medals and ribbons include the National Defense Service Medal, the Global War on Terrorism Service Medal, a Sea Service Deployment ribbon, a Navy "E" Ribbon, a Navy Good Conduct Medal, and a Marine Corps Achievement Medal. (GE 2; Tr. 53-54)

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 AGs. AG ¶ 2(a) is 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."

Adjudicative Guidelines, ¶ 18.

Burden of Proof

By virtue of the principles and policies 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 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. 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 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). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Analysis

Applicant is a well-regarded help desk analyst for a defense contractor whose credit reports list five debts. He accumulated marital debts during extended periods of unemployment following his Navy discharge. He has since paid off two of the debts (creditors 1.d and 1.e) and has repayment plans in place to pay off two other debts (creditors 1.a and 1.b) Only Applicant’s debt with creditor 1.c awaits resolution.

Security concerns are raised under the financial considerations guideline of the AGs when 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 valid delinquent debts and his past inability to resolve 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.”

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.

Applicant’s good-faith efforts to resolve his debts 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(b), “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 under the circumstances.” These mitigating conditions have considerable applicability to Applicant’s accumulated delinquent debts, two of which were assigned to his ex-wife for payment in his divorce judgment.

To be sure, Applicant is still liable for his creditor 1.c deficiency debt for \$21,836. In similar circumstances, the Appeal Board has said that an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously. What he needs is a credible plan to resolve his financial problems, accompanied by implementing actions. See ISCR Case No. 07-06488 (App. Bd. May 21, 2008) By the proofs presented, Applicant has achieved most of his objectives. He has only one debt left to address and is committed to paying this debt with resources as they become available. His payment efforts reflect a proven plan of repayment.

Consideration of Applicant’s background and circumstances surrounding his debt disputes, his steady income and good credit for most of his personal and business career, and the concerted efforts he has made to resolve his debts reflect positively on Applicant and demonstrate his overall good judgment, reliability, and trustworthiness. Applicant’s proofs provide credible indicators of his ability to be trusted in times of stress and enable him to meet his own evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is substantial that Applicant has mounted good-faith efforts to resolve his debts. Since joining his current employer, he has paid two of the listed debts (i.e., creditors 1.d and 1.e) in full and established payment plans with two of his remaining creditors (creditors 1.a and 1.b). He shows considerable promise in completing them.

Although Applicant has not yet mounted any payment initiatives on the only remaining debt he has not addressed (i.e., the \$21,836 deficiency balance owing creditor 1.c), he is fully committed to satisfying this debt as well when income resources become more readily available. Applicant has a record of meritorious military service and has also shown that he is a good father to his young son.

All of the extenuating facts and circumstances surrounding Applicant’s listed delinquent debts and the good-faith efforts he has mounted to resolve them under difficult circumstances enable him to successfully mitigate 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.e: 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