



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-06754

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

July 28, 2011

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant failed to mitigate security concerns over the state of his finances. Clearance is denied.

**Statement of the Case**

On February 22, 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, 1992), as amended (Directive); and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AGs) that were implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on March 15, 2011. The case was assigned to me on April 29, 2011, and was scheduled for hearing on June 22, 2011. A hearing was

held on the scheduled date. At the hearing, the Government's case consisted of seven exhibits (GEs 1-7). Applicant relied on one witness (himself) and four exhibits (AEs A-D). The transcript (Tr.) was received on July 5, 2011.

### **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 clarifying documentation of the 2007 judgment entered against him and payment credits on the two state liens filed against him for back child support. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with his bi-weekly earnings summaries (covering the periods of December 24, 2010 through July 23, 2011, as well as the period of October 16, 2009 through October 29, 2009, reflecting his \$315 bi-weekly pay deductions for back child support. These earnings summaries do not indicate what back child support arrearage the pay deductions are intended to address. Applicant's submission was admitted as AE E.

In a supplemental letter of July 20, 2011, Applicant provided an accounting of his recent telephone efforts with state child support representatives to obtain updated written information about the status of his back child support judgment and liens. This one-page letter is admitted as AE F.

### **Summary of Pleadings**

Under Guideline F, Applicant is allegedly indebted to (a) a state judgment entered in 2007 for \$5,025; (b) a state agency on a back child support lien of \$4,224 entered against him in 2006; (c) a state agency on a back child support lien entered against him in 2005 for \$3,515; and (d) 15 other creditors for delinquent debts exceeding \$10,000. In his response to the SOR, Applicant admitted most of the debts as alleged without explanation. He denied the judgment debt covered by subparagraph 1.a and a credit card debt covered by subparagraph 1.n.

### **Findings of Fact**

Applicant is a 34-year-old security officer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant is single and has never been married. (GE 1) He has three children (ages 1, 3, and 12) from two different mothers. (GE 1; Tr. 56-57) Applicant has two years of college credits but no degree or diploma. (GE 1; Tr. 48) Following several layoffs from prior jobs, he found temporary and part-time security guard positions with different employers between 2002 and 2009. (GEs 1 and 3; Tr. 44-54) He has held his current security guard position since October 2009. (GE 1; Tr. 55)

Due to layoffs and ensuing financial hardships, Applicant fell behind in his child support and student loan payments. A state agency responsible for enforcing his child support obligations obtained an adverse judgment against him in 2007 in the approximate amount of \$5,025. (GEs 3, 6 and 7) This agency's enforcement division initiated back child support liens against him in 2005 and 2006 to enforce back child support obligations against Applicant for \$4,224 and \$3,515. (GEs 6 and 7). These liens were formally filed by the state's tax commission and are listed as tax liens. (GEs 2-7) With his payment credits, Applicant currently owes less than \$30,000 in child support arrearage. (GE 3; AEs C and E)

Applicant has made three monthly payments of \$84 on his student loan account (creditor 1.g) beginning in May 2011. (AE B) He pays \$315 bi-weekly on one of his state child support accounts (inclusive of arrearage and current support) and to date documents payments of \$4,410 to the state child support department. (AEs E and F; Tr. 59-62, 62, and 99-101) However, Applicant is not aware of which of his three child support debts is being credited and has asked the state child support department for clarification. (AE F; Tr. 63-65) To date, he has not received any verbal or written clarification of his child support status. (AE F)

Additionally, Applicant pays \$250 a month in child support to the mother of his two young children who reside in his current state of residence. (Tr. 60-62) He assures he is current with these payments. The terms and conditions of his child support arrangements with this mother are unknown. How long Applicant has been making payments to this mother and how his monthly payments are subject to change are unknown as well. All that is known is that the mother filed a complaint in January 2007 in a state court in his state of residence, and Applicant is making child support payments to the mother in the amount of \$250 a month. (GE 7; Tr. 60-62)

Besides his back child support and student debts, Applicant accumulated additional debts. Specifically, he accumulated 14 consumer and medical debts exceeding \$1,500. All but five of these debts represent medical debts associated with outpatient medical care for himself at a time when he did not have any medical insurance. (Tr. 71-75, 93)

Applicant reported bi-weekly income of \$1,400 in his personal financial statement (GE 3; Tr. 96-97) This figure included overtime. Without any current overtime, he nets only \$1,100 every two weeks. (Tr. 82-83, 94-95) He has current monthly expenses of about \$1,500 a month and \$1,620 in monthly debts he is responsible for, inclusive of his child support obligations and student loan. (GE 3; Tr. 90-91, 96)

Applicant is currently looking for a second job to help him with his debts (Tr. 46, 56, and 103) He still hopes to pay off his debts in two and one-half years. (Tr. 105)

### **Endorsements**

Applicant is highly regarded by his supervisor. (AE D) His security lead who has worked with him and had the opportunity to form an opinion about his character

characterizes him as loyal, responsible, and trustworthy. (AE D) Applicant has his lead's total support. (AE D) He did not furnish any performance evaluations or evidence of any 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." 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 security guard who accumulated back child support debts between 2005 and 2007 that resulted in a state judgment (creditor 1.a) and two liens (creditors 1.b and 1.c) Besides his child support judgment and liens, he accumulated a student loan debt in the approximate amount of \$6,824 (creditor 1.g).

To date, the state child support agency responsible for enforcing child support obligations has collected approximately \$4,410 from Applicant through bi-weekly payroll deductions, and he currently owes less than \$30,000 on his aggregate child support arrearage. Applicant is also credited with paying off a smaller debt, a gas debt of \$51 (creditor 1.p), and making three smaller payments on his student loan debt (creditor 1.g) He provides no additional documentation, however, to validate any further payment

efforts with his listed creditors. Applicant's 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." Applicant's debts have been in delinquent status for some time; only recently has he begun to address them.

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 his 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.

Without more historical explanations for debt accumulations and efforts to address his remaining debts, (including a child support judgment taken in 2007), it is difficult to find either extenuating circumstances or concrete repayment steps sufficient to mitigate security risks associated with his delinquent debt accruals. To his credit, he has made payment progress on some of his back child support and student loan debts and paid off one small utility debt. His efforts to date, however, are not enough to credit him with the benefits of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

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, it was incumbent upon him to demonstrate more tangible steps to explain and discharge his back child support and other debts with the resources he has available every month to address his debts. Due to income shortages, he has not been able to make more progress in discharging his delinquent debts. And as a result, he is not able to fully satisfy any of the pertinent mitigating conditions. Although he has demonstrated considerable progress in his payments on one of his child support arrearage accounts, paid off one creditor, and initiated payments on his student loan debt, he needs a stronger track record of consistent repayments of his delinquent debts to facilitate safe predictions he can discharge his listed debts within the foreseeable future and stabilize his finances.

Based on a whole-person assessment, Applicant fails to surmount the judgment questions raised by his accumulation of delinquent debts over an extended period of time while he was for the most part fully employed. His respected civilian service is not enough by itself to overcome judgment risks associated with his unresolved finances. On

balance, Applicant has not shown sufficient tangible effort in addressing his debts to mitigate security concerns over his substantial debt accruals and demonstrate renewed control over his finances.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations, his civilian service, and his meritorious endorsement, it is still too soon to make safe predictive judgments about Applicant's ability and intentions to repay his accrued debts and restore his finances to stable levels commensurate with his holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.o, 1.q, and 1.r. Favorable conclusions warrant with respect to subparagraph 1.p.

### **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):      AGAINST APPLICANT

Subparagraphs 1.a through 1.o, 1.q, and 1.r:	Against Applicant
Subparagraph 1.p:	For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

