



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. 11-01356

**Appearances**

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

08/29/2012

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns regarding his finances. Eligibility for access to classified information is denied.

**Statement of Case**

On January 12, 2012, 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. This 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 February 8, 2012, and requested a hearing. The case was assigned to me on May 17, 2012, and was scheduled for hearing on June 26, 2012. At hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (himself) and presented six exhibits (AEs A-F). The transcript (Tr.) was received on July 10, 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 documented payments and endorsements. There being no objection from Department Counsel, and for good cause shown, I granted Applicant 21 days to supplement the record. I afforded the Government two days to respond. Within the time permitted, Applicant provided documentation of his payments to creditors 1.a and 1.k, endorsements, and performance evaluations. I admitted Applicant's submissions as AEs G through J.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 26 debts, exceeding \$55,000. In his answer to the SOR, Applicant admitted most of the allegations without explanations. He denied the allegations covered by subparagraphs 1.p, 1.q, 1.t, and 1.y. He provided no explanations for his denials in his response.

### **Findings of Fact**

Applicant is a 38-year-old integrator technician for a defense contractor where he has been employed since March 2010. (GE 1) He 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 August 2003, and he has two children from this marriage. (GE 1; Tr. 31-32) He separated from his wife in December 2007, and finalized his divorce in April 2009. (GE 2 and AE F; Tr. 21) Since October 2007, he has cohabited with another woman. (AE I)

Applicant claims no prior military service. He attended an adult technical school between May 1993 and June 1993, and received a certificate of completion. (GE 1)

### **Appellant's finances**

Between July 2007 and August 2009, Applicant was employed by a trucking company as an interstate truck driver. (GEs 1 and 2) He encountered medical problems with bleeding ulcers in 2009 and was laid off in August 2009. (GEs 1 and 2; Tr. 35-36) He was unable to find new employment for almost a year, which complicated his

already difficult divorce situation. (GE 2; Tr. 35-36) As a result, he experienced difficulties paying his accumulated medical bills (creditors 1.a, 1.b, and 1.m) and his child support obligations. (GEs 2-6; Tr. 37-38)

Between March 2005 and February 2007, Applicant was unemployed and lived off his income from his 401(k) retirement fund, unemployment insurance, and his credit cards. (GE 5; Tr. 29) Once he was laid off in March 2005, he ceased making payments on all of his debts (GE 5; Tr. 32) and fell behind with his child support responsibilities.

Between March 2005 and August 2010, Applicant accumulated a number of delinquent debts (13 in all) exceeding \$25,000. (GEs 2 through 6) Under the terms of his divorce judgment, Applicant shares joint legal custody of his children with his ex-wife. (AE F) Applicant and his ex-wife were assigned joint responsibility for their marital debts created during their marriage. (AE F) These assigned debts cover all of the listed debts in the SOR. (GEs 3-6) By the terms of the divorce judgment, Applicant became responsible for child support for each of his children in the respective amounts of \$350 a month. (AE F)

While Applicant's residence was awarded to his ex-wife, he was assigned half of the monthly mortgage obligation. (AE F) The mortgage on the residence, in turn, is reported to be over \$44,000 in arrears and over 120 days delinquent (*i.e.*, \$15,251). Applicant has paid nothing towards this mortgage since his divorce was finalized and relies on his ex-wife to cover the mortgage obligations. (AE E) Although his ex-wife accepts responsibility for the mortgage and is seeking mortgage refinancing (AE E), she has not to date obtained a new mortgage that excuses Applicant from any legal responsibility. Until she is able to obtain new financing that excludes Applicant as a joint obligor, Applicant remains a co-obligor on the joint note and mortgage and must be treated as one when assessing his mortgage responsibilities.

Applicant addressed several of his listed debts and documented payment of his debt to creditor 1.b (\$129), creditor 1.i (\$392), and creditor 1.l (\$190).(AEs A, B, and D; Tr. 39, 45-46) He provided probative proof of his partial payments to creditor 1.a (\$50) and creditor 1.k (\$50). (AEs G and H) He indicated he has a payment plan with creditor 1.c for \$50 a month, but provided no documentation. (Tr. 40-41) He provided no documentation either of any payments or payment plans covering creditor 1.d (\$1,707), creditor 1.e (\$1,708), creditor 1.f (\$702), creditor 1.h (\$1,246), creditor 1.j (\$633), or creditor 1.m (\$183). (Tr. 41-47) Applicant assures he is still working on resolving his remaining debts, and hopes to address them soon. (Tr. 43-47)

Since returning to work with his current employer, Applicant is current with his newest creditors. (Tr. 34) Addressing his creditors listed in the SOR, Applicant has paid two listed creditors in full (totaling a little over \$600) and has payment arrangements in place with creditors 1.a and 1.k. (AEs B, D, G, and H) To date, he has made \$50 payments to each of these creditors. His mortgage responsibilities with creditor 1.g are still unclear. In the three years that have elapsed since his April 2009 divorce, Applicant has paid nothing on the mortgage debt and believes he has no legal responsibility

despite the joint and several terms of the mortgage and the 50-50 spousal allocation of the divorce debt in the divorce judgment. (AE F) Without more input from Applicant, his mortgage responsibilities cannot be accurately sorted out on the presented record.

## **Endorsements**

Applicant is well regarded by his supervisor and coworkers. (AE I) His performance evaluations rate Applicant satisfactorily in all phases of his work responsibilities. (GEs I and J; Tr. 30)

## **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 United States v. Gaudin*, 515 U.S. 506, 509-511 (1995). 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 an integrator technician whose credit reports list 13 delinquent debts. All of these debts have either been charged off or assigned for collection. While several of the debts are disputed, they presumptively belong to Applicant and are imputed to him, absent convincing documentation to the contrary.

Security concerns are raised under the financial considerations guideline of the AGs when an 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 presumptively valid delinquent debts (based on produced credit reports) and his past inability to resolve these debts by the disputes process available to him 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.

Extenuating circumstances are associated with most of Applicant’s delinquent debts he accumulated while medically weakened, out of work for extended periods, and enmeshed in a complicated divorce proceeding. 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,” applies to Applicant’s situation.

Still, Applicant retained the responsibility to address his debts when he was financially able. Employed by his current employer since March 2010, he could be reasonably expected to address his old debts and work out payment plans with those creditors he could not pay off. Follow-up measures like this were required of Applicant to satisfy the good-faith and due diligence repayment requirements of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” and the counseling/control requirements of MC ¶ 20(c), “the person has received

counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.” This mitigating condition has little application to Applicant. To date, he is able to document full payments to three of his creditors and modest payment plans with two other creditors. The balance of his debts remain unresolved with no concrete plans in place for addressing these debts.

Under the circumstances, Applicant can take very little advantage of either of these mitigating conditions. For while an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously, he needs 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 no current viable plan in effect to resolve his debts.

To be sure, some of Applicant’s listed delinquent debts predate 2008 and are now time-barred by his state’s pertinent statute of limitations. His state’s statute of limitations for written contracts and open-ended accounts (like credit card debts) is four years. See §337 of CC. When applied, the state statute bars enforcement of debts over four years delinquent. Applicant has not asked for statute of limitations protection, and it is not available to him in any case under Appeal Board guidance. Over time, the Appeal Board has shown general consistency in disallowing applicant claims to mitigation based on charge-offs and limitation bars on debts previously unpaid due to cited extenuating circumstances. Cf. ISCR Case No. 07-16427 at 3-4 and n.6 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-01122 at 5 and n.3 (App. Bd. Feb. 9, 2009) No different application of the mitigation guidelines are warranted in Applicant’s situation.

Consideration of Applicant’s background and the circumstances surrounding his medical issues, his debt accumulations, his recurrent periods of unemployment, and his lack of follow-up efforts to address the bulk of his accumulated debts makes it very difficult to credit Applicant with the degree of good judgment, reliability, and trustworthiness necessary to satisfy security clearance eligibility criteria. Applicant’s evidence provides insufficient indicators of his ability to be trusted in times of stress. His corrective efforts taken to date are insufficient to enable him to meet his evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is insufficient to demonstrate that Applicant has mounted sufficient good-faith efforts to resolve his debts. In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole-person. Unfavorable 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): AGAINST APPLICANT

Subparagraphs , 1.c through 1.h, 1.j,  
1.k, and 1.m: Against Applicant

Subparagraphs 1.a, 1.b, 1.i, and 1.l: 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