



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. 11-05441

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

12/26/2012

**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 the Case**

On June 22, 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 DOHA 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, 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 July 31, 2012, and requested a hearing. The case was assigned to me on October 3, 2012, and was scheduled for hearing on November 13, 2012. The hearing was convened on that date. At hearing, the Government's case consisted of eight exhibits (GEs 1-8). Applicant relied on two witnesses (including himself) and two exhibits (AEs A-B). The transcript (Tr.) was received on November 21, 2012.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated an IRS tax lien in September 2011 covering unpaid federal taxes of \$42,413, two federal tax debts totaling \$10,392 for tax year 2007 and \$14,267 for tax year 2008, a state tax debt totaling \$14,993, and 10 consumer debts exceeding \$75,000. In his answer to the SOR, Applicant admitted most of the allegations without explanations. He claimed the two federal tax debts covered in subparagraphs 1.b and 1.c are covered by the federal tax lien alleged in subparagraph 1.a. And he claimed the \$12,511 debt alleged in subparagraph 1.n is a duplication of the debt alleged in subparagraph 1.j. Applicant denied the debt alleged in subparagraph 1.l for \$1,238 without providing any explanations.

### **Findings of Fact**

Applicant is a 51-year-old engineering technician for a defense contractor who seeks a security clearance. The SOR allegations admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant was born and raised in the Philippines. (GE 1 and AE 1; Tr. 39) He immigrated to the United States in 1982 and became a naturalized U.S. citizen in July 1990. (GE 1; Tr. 39) Applicant claims some U.S. military service. (Tr. 40) He received his high school diploma in the Philippines in 1974 and claims two years of college credits in the Philippines. (GE 1; Tr. 41-42)

Applicant married his first wife in June 1982 and divorced her in April 1984. (GE 1) He has no children from this marriage. In May 1984, he married his second wife and has two children from this marriage, who reside with Applicant and his wife, along with their children. (GE 4; Tr. 40, 51-52) Applicant's second wife immigrated from the Philippines in 1981 and became a naturalized U.S. citizen in January 1989. (GE 1; Tr. 39) She earned a bachelors degree in chemistry in the Philippines. (Tr. 42, 90)

### **Finances**

Between 2007 and 2010, Applicant and his second wife accumulated over \$35,000 in delinquent federal tax debts and over \$14,793 in delinquent state tax debts with his state's franchise tax board. (GEs 3 and 4) During this time, he and his wife also accrued ten delinquent consumer debts totaling in excess of \$75,000. (GEs 1-8)

Applicant attributes his debt problems to unemployment and underemployment by his wife following her loss of her part-time job and layoff from her primary job in 2010. (Tr. 34-36) Currently, she is working part time and is looking for full-time work. (Tr. 38, 44)

Before his wife lost her job, she and Applicant still owed considerable back federal and state taxes. (Tr. 45-48) At the time, his wife was making around \$24,000 a year. (Tr. 56); while Applicant was earning \$60,000 a year. (Tr. 56) Loss of his wife's two jobs placed additional financial stress on their mortgage (three in all) payments and prompted Applicant and his wife to make a \$12,000 hardship withdrawal from their 401(k) retirement account. (Tr. 4, 57-58, 84-85) He presently has \$15,000 left in his 401(k) account. (Tr. 85)

By 2011, Applicant was netting \$3,108 a month, and his wife was receiving \$1,850 a month from her unemployment insurance. (GE 2; Tr. 60-62) Altogether, his wife was out of work for almost two years, and when she did earn part-time income during this period, her earnings were deducted from her unemployment benefits. (Tr. 61-62) Currently, Applicant nets around \$3,000 a month after deductions are computed. (Tr. 56) W2 earns approximately a \$1,000 a month in net income from her part-time job. (Tr. 44) With her monthly unemployment insurance and part-time income computed together, she nets \$1,800 a month. (Tr. 62-63) This represents no change from her income in 2011. (Tr. 62-63)

From their current income, Applicant and his wife make their mortgage payments and monthly necessities. Additionally, they continue to make their agreed monthly payments of \$440 to their state enforcement agency to satisfy their delinquent state tax debts (now just over \$12,000) for tax years 2007-2010. (AE A; Tr. 64, 68) They have made earnest attempts to address their back taxes owed the IRS (over \$42,000), but have not been able to do so with his wife's reduced income. (Tr. 65)

Applicant and his wife continue to struggle with their delinquent consumer debts and have not been financially able to address these debts to date. (Tr. 69-82) Their debts include a \$12,000 deficiency owed to a finance company on a repossessed vehicle (creditor 1.j) and a \$46,000 delinquency on a home-equity line of credit secured by a second trust deed. (Tr. 76-82) They dispute the listed creditor 1.n debt as a duplication of the deficiency indebtedness covered by listed creditor 1.j. Their explanations are corroborated in the credit reports and are accepted. Applicant and his wife claims limited on-line financial counseling, but nothing specific they can point to. (Tr. 66)

Since August 2012, Applicant and his wife have been in contact with a bankruptcy attorney, exploring the possibilities of their seeking bankruptcy protection under Chapter 7. (AE B; Tr. 38, 82) The bankruptcy attorney has conditioned his filing a bankruptcy petition on their first remitting a \$3,000 retainer fee. (AE B; Tr. 92-93) To date, they made no payments to the attorney, and they do not know which of their debts are dischargeable.

## **Endorsements**

Applicant did not provide any endorsements or performance evaluations. He made no requests to supplement the record.

## **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 an engineering technician whose credit reports list a back federal tax lien and numerous consumer debts in charge-off or collection status. All of these listed debts (save for his disputed debt with creditor 1.n) remain outstanding. Applicant still owes over \$42,000 in delinquent federal debts and \$12,000 in back state tax debts after crediting him for the amounts paid.

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 delinquent debts (based on produced credit reports and Applicant admissions) and his past inability to resolve these debts, either by payment, successful dispute, or a combination thereof, 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 some of Applicant's delinquent tax and consumer debts (but not all of them). Applicant and his wife accumulated and compounded their delinquencies in their tax and consumer debts after his wife lost both of her jobs in 2010 and was unable to find good replacement work. 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," has some application to Applicant's situation.

To date, Applicant and his wife have made some payment progress with their back state taxes. But they still owe in excess of \$42,000 in delinquent federal taxes and over \$12,000 in back state taxes. Compounding concerns over Applicant's finances, he has made no documented progress in addressing his delinquent consumer debts outstanding. Currently, Applicant is pursuing a bankruptcy course and has retained a bankruptcy attorney to assist him. This attorney wants his calculated attorneys fees paid up-front, though, before he will take any action on filing a Chapter 7 bankruptcy petition on Applicant's behalf. Applicant has been unable to meet this attorney's advance payment demand. Once a petition is filed, Applicant could expect to discharge his consumer debts, but not his federal and state tax debts. Tax debts are typically treated as priority debts, and not dischargeable in bankruptcy.

Follow-up measures with his bankruptcy attorney 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.” By the proofs presented, Applicant has no established plan in effect to resolve his debts or identified counseling that can assist him in developing a practical budget that can help him to facilitate a workable payment plan for most of his creditors.

So, under the circumstances of this case, Applicant can take very little advantage of either MC ¶ 20(d) or MC ¶ 20(c). 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)

To be sure, some of Applicant’s debts appear to be 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 circumstances surrounding his debt accumulations, his wife’s lengthy unemployment and underemployment periods, his own limited income sources, and his lack of follow-up efforts in pressing his bankruptcy attorney to file a bankruptcy petition on his behalf, makes it very difficult to credit Applicant with the degree of good judgment, reliability, and trustworthiness necessary to mitigate security concerns about his finances at this time. Applicant’s 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. Since he did not provide any endorsements or documentation of his work-related evaluations and civic contributions, whole-person assessment lacks sufficient information to provide any material countervailing considerations to take into account in making an overall trust assessment of Applicant’s clearance eligibility. 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 subparagraphs 1.a through 1.c and 1.e through 1.m of the SOR. Favorable conclusions warrant with respect to subparagraphs 1.d and 1.n.

### **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.a through 1.c and 1.e  
through 1.m:      Against Applicant

Subparagraphs 1.d and 1.n:      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