



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. 11-07666

**Appearances**

For Government: Gregg Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

03/20/2013

**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 13, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOD 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 19, 2012, and requested a hearing. The case was assigned to me on November 26, 2012, and was scheduled for hearing on December 6, 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 nine exhibits (AEs A-I). The transcript (Tr.) was received on December 14, 2012.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with updated account information. There being no objection from Department Counsel, and good cause being demonstrated, Applicant was granted 15 days to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with debt references, court documents, account demands, settlement initiatives, and settlement summaries. I admitted Applicant's submissions as AEs J through S.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated seven delinquent debts exceeding \$48,000. In his response to the SOR, Applicant denied five of the alleged debts. He claimed one was favorably resolved in a lawsuit (1.a); he claimed two of the alleged debts were duplications (creditors 1.c/1.d and 1.b/1.e); and he claimed the remaining debt (creditor 1.g) does not belong to him. He explained that his admitted debts became delinquent during brief periods of unemployment in 2006-2007.

### **Findings of Fact**

Applicant is a 53-year-old process 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 married in October 1991 and has no children from this marriage. (GE 1) He earned a bachelor's degree from an accredited university in December 1981. He claims no military service.

### **Finances**

Late in 2006, Applicant left the automobile industry where he had worked for 22 years. (GEs 1 and 2; Tr. 28-29) For a number of months following his industry exit, he experienced a large reduction in income and accumulated a number of delinquent debts. (GE 2; Tr. 30) Unable to pay all of his bills after exiting the industry, Applicant explored debt consolidation with a credit consolidation firm in late 2006. (GE 2) In January 2007, he agreed to a repayment program with a debt consolidation firm. (AE I)

Under the terms of his program, Applicant identified \$21,305 in unsecured debt and agreed to an estimated payout of \$8,522. (GE 2 and AE I) Service fees were set at \$3,195, and monthly payments were estimated to be \$325. (GE 2 and AE I)

After paying the consolidation firm its service fee and following his monthly payments, he continued to get collection notices from his creditors for the same owed amounts. (GE 2) When Applicant notified the consolidation firm, he was told to fax the notices to the firm. He complied and continued making his monthly payments to the firm until January 2008. (GE 2) When he attempted to obtain a progress report from the consolidation firm, the firm never returned his calls or responded to his emails. (GE 2) Convinced the consolidation firm was not meeting its payment responsibilities with his creditors, he stopped making his monthly payments in early 2008. (GE 2)

Based on a review of the available credit reports, only one of the identified debts listed in the SOR was addressed prior to the issuance of the SOR in 2012. Records document that the assignee of creditor 1.a initiated a collection suit in 2009. (GEs 2-5; Tr. 33-34) The debt covered by this suit was resolved favorably to Applicant by a court dismissal of the suit. (AE B; Tr. 35-36) Applicant never disputed the entire debt, just the amount. He admits to owing the underlying creditor around \$8,000. (Tr. 35-36) To date, he has made no effort to pay the \$8,000 sum he admits he owes to the underlying creditor. (Tr. 35) Because the creditor 1.a account was assigned to the collection company that sued him, he does not retain any practicable way of dealing with the underlying creditor anymore. (Tr. 35-37)

Since relocating to his present state of residence in 2008, Applicant has tried to address his old debts with the help of an attorney. (AEs C, D, P, and Q; Tr. 31-33, 51-52) His lawyer has written letters to the collection agents of creditors. 1.b through 1.g, but to date has not received written responses from any of these creditors. (AEs C, D, P, and Q; Tr. 24-27, 42-44) Once he receives responses from these creditors with verified accounts of the reported debts, he will make every effort to arrange payment plans with them. (Tr. 38-41) Applicant has had no financial counseling, though, and has made no material progress to date in repaying any of his listed debts. (Tr. 51-54)

Some of the listed debts in the SOR are manifest duplications: creditor 1.b/1.e and creditor 1.c/1.d. (GEs 3-5 and AEs E and F; Tr. 43-46) And Applicant has made an effort to address the remaining debts. In response to his attorney's letters, two of the listed debts have been removed from his most recent credit report: creditors 1.a and 1.f. (AE F; Tr. 26, 46-47) However, the remaining debts continue to be listed in his latest credit reports and remain either unpaid or unresolved. (GEs 2-5; AE I; Tr. 35-36)

Three of Applicant's remaining debts (i.e., creditors 1.c, 1.e, and 1.g) are aged and reflect charge-offs dating to December 2006 and earlier. (GEs 3-5 and AEs E and F; Tr. 26-27) With the help of an attorney, Applicant has made contact with these creditors in an effort to verify whether any or all of the debts are ones he is responsible for. (GE 2 and AE C) Once he is able to verify what debts are his, he will work with his attorney on developing payment plans with the creditors he is able to identify. (GE 2 and AE C; Tr. 26-27, 37-44)

Applicant is currently out of work and collecting unemployment insurance (about \$1,200 a month) and has no money left from his old 401(k) account to address his debts. (Tr. 49-51) He has \$1,320 in monthly expenses and a monthly mortgage of \$1,212. (GE 2; Tr. 50) He has incurred no new debts and is current with his mortgage. (Tr. 55-56) He estimates his home to be worth approximately \$220,000, and he has two vehicles worth around \$17,000. (GE 2) Applicant is looking for work and estimates good job prospects with the employer who continues to sponsor his security clearance application. (Tr. 48-50, 57-61) He hopes to be able to address his delinquent debts soon. (Tr. 61-62)

## **Endorsements**

Applicant did not provide any endorsements. Nor did he provide any performance evaluations or evidence of his contributions to his employer, family, and community.

## **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 process technician who accumulated a number of delinquent debts after leaving the auto industry of his home state in 2008 to pursue other types of employment opportunities. Most of his listed debts remain outstanding and unresolved. To date, the only debts Applicant has been able to resolve are his listed debts with creditors 1.a (through a court dismissal), 1.b and 1.d (manifest duplications), and 1.f (since removed from his credit report). All of the remaining listed debts remain outstanding and under review by himself and his attorney. Applicant still owes over \$20,000 in acknowledged delinquent debts.

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 AGs for financial considerations: ¶ 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 debts (but not all of them). Applicant accumulated his delinquencies after he left the auto industry to explore other employment opportunities in 2008 and was unable to promptly 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 has made some payment progress with his listed debts. But he still owes in excess of \$20,000 in delinquent debts after crediting him with duplications and removals from his credit report. Compounding concerns over Applicant’s finances,

he has made no documented material progress in addressing his still outstanding delinquent debts.

Earlier follow-up measures with his retained attorney were required of Applicant to satisfy the good-faith and due diligence repayment 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,” and MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” By the proofs presented, Applicant has not pursued financial counseling and still has no organized budget or plan in effect to resolve his debts once he is able to identify those he questions.

So, under the circumstances of this case, Applicant can take very little advantage of either MC ¶ 20(c) or MC ¶ 20(d). 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 § 16.004 of T. 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 holding that an applicant’s reliance on charge-offs and limitation bars do not represent good-faith repayment efforts. *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 brief periods of unemployment before relocating to his current state, his lack of material progress in tracking and paying his admitted debts, and his current limited income sources, 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, while encouraging, 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 over the past four years since his relocation 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.c, 1.e, and 1.g of the SOR. Favorable conclusions warrant with respect to subparagraphs 1.a, 1.b, 1.d, and 1.f.

### **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:	AGAINST APPLICANT
Subparagraphs 1.c, 1.e, and 1.g:	Against Applicant
Subparagraphs 1.a, 1.b, 1.d, and 1.f:	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