



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)
)
)
)
)

ISCR Case No. 11-07958

Appearances

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

04/09/2013

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 November 1, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why the 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, DOD 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 December 3, 2012, and requested a hearing. The case was assigned to me on January 9, 2013, and was scheduled for hearing on February 28, 2013. The hearing was convened on that date. At hearing, the Government's case consisted of seven exhibits (GEs 1-7). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on March 7, 2012.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 7 bankruptcy relief in August 2001 (debts discharged in December 2001) and (b) accumulated 11 delinquent debts totaling more than \$25,000.

In his response to the SOR, Applicant admitted most of the allegations. He denied the debts covered by subparagraphs 1.h and 1.j. He claimed he could not find 1.i in his credit report and disputes the debt covered by subparagraph 1.j for reasons that the deductible should have been paid by his insurance company. He claimed the mothers of his children were responsible for his insurance co-pays and never paid them. He explained that the bank covered by subparagraph 1.i is defunct and cannot be reached to explore debt resolution. And he claimed to be current with his car and home payments, and he recently purchased 40 acres of land outright at a tax lien auction as an investment.

Findings of Fact

Applicant is a 46-year-old electronic 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 his first spouse in July 1986 and divorced her in June 1991. (GE 1; Tr. 38) He has two adult children from this marriage. (GE 1; Tr. 37-38) Applicant married his second wife in May 1999 and divorced her in July 2001. (GE 1) He has no children from this marriage. Applicant earned a high school diploma in June 1985 and claims no college credits. He enlisted in the Army in March 1986 and served four years of active duty. (GE 1)

Finances

Applicant has struggled with his finances over the past 20 years. In 1995, his car (a 1987 Ford Mustang) was repossessed, and a judgment was taken against him for the deficiency in the amount of \$6,804. (GEs 5 and 6) Biweekly garnishment of his wages ensued. (GE 6) In a signed, sworn statement given to an investigating agent from the Defense Security Service (DSS) in December 2000, he detailed his existing financial condition. (GE 7) His listed debts included child support arrearage and several collection accounts.

Six months following his DSS interviews (GEs 5 and 6), Applicant petitioned for Chapter 7 bankruptcy relief. (GE 5) Schedules filed with his August 2001 petition are not in evidence and cannot be estimated. Applicant received his bankruptcy discharge in December 2001. (GE 5) He attributed his bankruptcy to assorted financial problems associated with his divorce from his first wife, imposed child support obligations, and low-paying jobs. (GEs 6-7; Tr. 65-66) Applicant's explanations are credible enough and are accepted.

Between 2004 and 2005, Applicant accrued a number of medical bills associated with emergency medical services not covered by his workman's compensation carrier. (GE 2) His first wife did not cover the deductibles required by their medical insurance carrier, and the hospital reported the unpaid deductibles as delinquencies with the credit reporting agencies. (GEs 2-4)

In May 2004, Applicant purchased a vehicle for around \$25,445 and financed it with a car loan. (GE 2) When the car payments became too burdensome for him, he voluntarily returned the vehicle in 2006 to avert repossession. (GE 2; Tr. 30-31, 45-47) Currently, he still owes a deficiency on his car loan in the reported amount of \$23,365. (GE 2; Tr. 32) Whether this amount represents a deficiency balance after crediting proceeds from the sale of the vehicle is not clear. (Tr. 32)

Applicant admitted all of the listed medically-related debts. (Tr. 33-34, 50- 51) He has made no documented progress in the repayment of any of his listed debts since discussing them with an investigator from the Office of Personnel Management (OPM) in April 2011. (GE 2) He estimates to have around \$1,000 in medical bills that he hopes to discharge in June 2013 after he sells some property. (Tr. 44, 50-51) He has not pursued financial counseling or developed a budget. (Tr. 53)

Applicant and his fiancé have net income between them of approximately \$3,800 a month (\$2,400 his and \$1,400 hers) and monthly expenses of \$2,290. (GE 2; Tr. 55-61) He has debt payments of \$442 a month and a net monthly remainder that varies between \$1,300 and \$1,500 a month. (GE 2; Tr. 62-63) In months when he incurs extraordinary property expenses, his remainder is less. He attributes memory lapses to his past failures to address his delinquent debts when funds were available. (Tr. 63)

Applicant has savings of \$600, a home he purchased in July 2012, and 40 acres of land. (Tr.40-41, 63-64, and 68-70) Purchase prices and value assessments on these properties were not made available. Applicant has no current child support responsibilities and no back child support obligations. (Tr. 39-40)

Endorsements

Applicant did not provide character references from any identified sources. 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 *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 electronics technician with a considerable history of financial problems associated with divorce and low-paying jobs. Heavily indebted, he petitioned for Chapter 7 bankruptcy protection in August 2001 and received his discharge sometime in December 2001. Since his bankruptcy discharge, he accumulated

numerous delinquent debts, mostly medical-related not covered by his health insurance. Altogether, Applicant accumulated 11 delinquent debts exceeding \$25,000 between 2004 and 2010. His financial problems raise security concerns.

Financial concerns

To date, Applicant has not addressed his delinquent debts. Two of the listed debts (creditors 1.h and 1.j) he disputes. One (creditor 1.h) he could not locate on his credit report. The other (creditor 1.j) involved an insurance deductible that belonged to his ex-wife and son. Outstanding balances on Applicant's disputed and unpaid debts approximate \$25,000. Applicant's past history of accumulations of delinquent debts and his past inability to resolve his most recent 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 associated with Applicant's debts are dated and entail losses associated with his divorces, low-paying jobs, and medical co-pays not paid for by his ex-wife and son. 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," have some application to Applicant's situation. Still, he has had the resources to address his debts and has provided no documentary proof of any efforts to resolve any of his debts over the past two years.

Financial counseling and follow-up payment initiatives with his creditors could reasonably be expected of Applicant following his 2011 OPM interview 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." Based on the circumstances of this case, Applicant can take little advantage of MC ¶ 20(c) or MC ¶ 20(d).

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). Applicant's actions to date, reflect payoffs of some of his

creditors, but no concrete plans to resolve his debts associated with his vehicle deficiency and his undisputed medical debts.

Consideration of Applicant's background and financial history, his bankruptcy discharge, and his latest struggles with delinquent debts make it 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 failure to initiate any documented corrective efforts to date preclude him from meeting 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 11-plus years since his bankruptcy discharge to satisfy his outstanding 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.g, 1.i, 1.k, and 1.l. Favorable conclusions warrant with respect to subparagraphs 1.h and 1.j.

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.a through 1.g, 1.i, 1.k, and 1.l:	Against Applicant
Subparagraphs 1.h and 1.j:	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.

Roger C. Wesley
Administrative Judge

