



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-08382

Appearances

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

02/05/2013

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his finances. Eligibility for access to classified information is granted.

Statement of the Case

On August 31, 2012, the Department of Defense (DOD) 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, 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 DOD on September 1, 2006.

Applicant responded to the SOR on October 1, 2012, and requested a hearing. The case was previously assigned to another administrative judge and was reassigned to me on November 26, 2012. The case was scheduled for hearing on December 3, 2012. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and eight exhibits (AEs A-H). The transcript (Tr.) was received on December 12, 2012.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 13 delinquent debts exceeding \$112,000. In his answer to the SOR, Applicant admitted most of the allegations. He denied any debts to creditors covered by subparagraph 1.b (\$1,428); 1.e (\$2,393); 1.g (\$671); and 1.m (\$5,079). He claimed he never had accounts with creditor 1.b, 1.e, 1.g, and 1.m. He claimed he developed a monthly budget to better manage his finances and employed legal counselors to negotiate settlements with his various creditors. He claimed he has placed eight of his listed accounts with a debt consolidation firm for the purpose of negotiating settlements on his behalf.

Findings of Fact

Applicant is a 62-year-old senior engineer of a defense contractor who 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 September 1972 and has two children from this marriage. (GE 1) His son currently lives at home with Applicant and his wife. (Tr. 71) Applicant earned a bachelor's degree in occupational education and a master's degree in logistics management in September 1983. (GEs 1 and 2) Applicant enlisted in the Air Force (AF) in December 1969 and served ten years of active duty as an enlisted airman. (GE 1) He became an AF officer in September 1979 and served 11 years of active duty before his honorable discharge in January 1990. (GE 1) Applicant receives AF pension benefits. (AE B) He is a deacon in his church. (Tr. 44)

Applicant's finances

Following an anticipated company lay-off in June 2004, Applicant relocated to other states to take jobs with defense contractors. (GE 1 and AE C; Tr. 32-33) For the first two years, he left his wife behind to sell their local home. (GE 2 and AE C) Anticipating his wife joining him in the state of his second relocation, Applicant purchased a home in this state in November 2005 for approximately \$200,000. (GEs 2-4) The strains of maintaining two homes before his wife could join him in their new state of residence added considerably more to his credit card debts. (GE 2 and AE 3; Tr. 32-34, 66-67) His finances were further drained by the monetary support he provided his son who had alcohol issues and required financial help to sustain him. (AE C; Tr. 33-34, 76-77)

By the time Applicant (with his wife) returned to their current state of residence in September 2006 to facilitate Applicant's accepting a position with a new defense contractor, he had maxed his credit cards. Still, they were able to purchase a new home as they attempted to sell the home they vacated. (Tr. 69-70)

Applicant and his wife continued to struggle with their finances after their return to their current state of residence in 2006. By October 2010, Applicant had defaulted on the mortgage on his home in his previous state of employment. At the time of default on his out-of-state mortgage, Applicant had a loan balance of approximately \$204,000. (GE 2; Tr. 36-37) After his tenants ceased paying rent for the house, he attempted to arrange a short sale with his lender for a sale price matching the loan balance, but to no avail. (Tr. 36-37) When he was unable to obtain short sale approval from his lender, he tried renting the house again without success. Currently, he is resigned to the lender's foreclosing on its mortgage and estimates the home to be worth around \$185,000. (Tr. 39) To date, the lender has shown no interest in initiating foreclosure proceedings. Should the lender elect to foreclose, it could potentially claim a deficiency for the difference in the sale price and the loan balance at the time of the sale. (Tr. 39-40)

Applicant engaged a debt consolidation firm in December 2009 to negotiate settlements with his creditors. (GE 2; Tr. 66) He initially agreed to monthly payments of \$1,847. (GE 3; Tr. 47) Based on his account history and payment schedule, he has made monthly payments over the past three years exceeding \$64,000 to the firm to be used to pay off his listed debts. (GE 2; Tr. 40-41) Close to half of these payment receipts have been earmarked by the firm for negotiated pay outs to the scheduled creditors in the program; the balance is to be disbursed to cover legal fees. (GE 2) Applicant understands that he completed his fee obligations with his debt consolidation firm in November 2012. (Tr. 41) Henceforth, all of the receipts from Applicant's \$1,847 debt consolidation payments will be placed in escrow for payment to his creditors. (GE 2; Tr. 41)

SOR-listed debts covered by Applicant's debt consolidation agreement are comprised of the following debts: creditor 1.b (\$1,428), creditor 1.c (\$10,000), creditor 1.d (\$7,818), creditor 1.h (\$8,750), creditor 1.i (\$2,174), creditor 1.j (\$6,724), creditor 1.k (\$24,000), and creditor 1.l (\$19,000). (GEs 2-4) To date, Applicant's debt consolidation firm has negotiated settlements with creditor 1.i, creditor 1.j, and creditor 1.k. (AEs D and G; Tr. 56-59) These three debts have been considerably paid down and are expected to be satisfied in 2013. (Tr. 62-63) Applicant projects additional settlements with the remaining creditors covered by his debt consolidation program; he expects to complete his plan payments and pay off his remaining creditors in his consolidation program by April 2014. (Tr. 47-49, 62-64, 67)

One of Applicant's covered accounts in his consolidation program (creditor 1.e) involves one of several accounts with the same underlying creditor. (GEs 2-4 and AE G) The account numbers on Applicant's credit reports for this account do not match the account number associated with the same creditor in Applicant's debt consolidation program. (GEs 2-4 and AE G; Tr. 50-53) Once this discrepancy was clarified for Applicant at the hearing, he acknowledged the difference and relinquished his payment claims for

this listed debt. (Tr. 53) Applicant will address this debt soon with his debt consolidation firm and resolve it. (Tr. 53)

Three debts disputed by Applicant are the debts covered by subparagraphs 1.a (\$850), 1.g (\$671) and 1.m (\$5,079). Applicant claims to have satisfied the creditor 1.a and 1.g debts and cites to his most recent 2012 credit report as probative evidence the debts have been paid and closed out by the creditors. See Applicant's response, GE 3; Tr. 64, 69. Department Counsel does not contest Applicant's claims (Tr. 13-14, 64, 69), and they are accepted. Likewise, Department Counsel does not contest Applicant's claims that he has no outstanding debt with creditor 1.m. (Tr. 13-14, 64, 69) Applicant's claims are also accepted.

Several of the listed debts are not included in Applicant's debt consolidation plan and have not been formally addressed by Applicant. One of the debts is a potential mortgage deficiency balance with creditor 1.f (\$25,000) on the out-of-state home that is subject to foreclosure. Currently, Applicant owes over \$25,000 in accrued mortgage principal, interest, and penalties on this mortgage, and awaits notice of foreclosure. (GEs 2-4) Should the property be foreclosed by the lender with a deficiency demand for any remaining balance owing on the mortgage, Applicant will address it.

Applicant nets \$5,832 a month from his employment and \$2,449 a month from his combined AF pension benefits and former employer retirement accounts. (AE B) He has monthly expenses (inclusive of his debt consolidation payment of \$1,847) of \$7,998. (AE B; Tr. 47-48) This leaves him with a small monthly remainder of \$383. (AE B; Tr. 31-32, 72-73)

Endorsements

Applicant is well regarded by one of his colleagues who knows him and has interacted with him professionally and in church activities. This colleague characterized Applicant as dependable and committed to resolving his financial issues. (AE A; Tr. 43-44) His colleague's observations are credible and accepted.

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. . ."

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 a well-regarded senior engineer who accumulated numerous delinquent debts during years of working out-of-state and managing two residences for himself and his wife. Applicant has since engaged a debt consolidation firm to negotiate settlements with his creditors and has paid over \$60,000 to the firm over the past three years (net of legal fees) to be held in escrow while payment agreements are negotiated with his creditors. Some of the SOR-listed debts are not included in his plan. Two of the listed debts are disputed (creditors 1.a and 1.m) and are not contested by the Government. And one potentially enforceable debt depends on the outcome of expected foreclosure and may or may not ripen into a deficiency demand from the lender. Conceivably, the property could generate enough proceeds from a foreclosure sale to cover Applicant's current loan balance.

Applicant's accumulation of delinquent debts listed in the SOR, some of which are addressed in his debt consolidation plan, raise potential security concerns about his judgment, reliability, and trustworthiness in managing his finances. His actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 9(a), "inability or unwillingness to satisfy debts," and DC ¶ 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.

Added expenses associated with Applicant's relocations between 2004 and 2006 and Applicant's inability to address his increased debts associated with his maintaining two households while relocated in different states placed added strains on Applicant's finances and reflect extenuating circumstances. These extenuating circumstances and Applicant's continuing efforts to work with his creditors, primarily through the debt consolidation firm he engaged in 2009, merit application of three of the mitigating conditions for financial considerations: 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;" 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."

In circumstances similar to the present case, the Appeal Board has said that an applicant need not have paid or resolved every one of his proven debts or addressed all of his debts simultaneously. What is required of the applicant is a credible plan to resolve his financial problems, accompanied by significant implementing actions. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008)

In Applicant's case, he established a workable debt consolidation plan in 2009 and has faithfully made his agreed payments to the firm charged with the responsibility to negotiate settlements on his behalf. Over the course of the past three years he has made payments to this firm in excess of \$64,000, of which nearly half of the receipts has been earmarked for settling debts committed to his debt plan. His efforts to date reflect a strong commitment to paying his listed debts and stabilizing his finances. Looking to the future, Applicant will no longer have to split his monthly payments with the debt consolidation firm that manages his escrow. This should free up more funds for negotiated settlements and help Applicant to meet his April 14, 2014 target for paying his creditors.

A good repayment track record has been consistently emphasized by the Appeal Board when assessing an applicant's good-faith repayment efforts, See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Applicant is gainfully employed with an established defense contractor that produces solid income for himself and his family, and he retains a modest remainder

each month to address his remaining debts. With his established payment plan and stabilizing finances, he is well positioned to pay off most of the debts covered by his repayment plan in 2014 and add additional debts to his plan as they are identified.

Consideration of Applicant's military and educational background, the extenuating circumstances associated with his accumulated debts, his current income from the defense contractor who employs him, and the documented affirmative steps he has taken to resolve his debts permits a favorable assessment of his overall good judgment, reliability, and trustworthiness. Applicant's proofs provide sufficient credible indicators of his ability to be trusted in times of financial stress and enable him to satisfy his evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is substantial that Applicant has performed well during his military and civilian service and is entitled to considerable credit for his service contributions. Unfortunate economic circumstances played a pivotal role in his inability to keep up with his mortgage payments on his out-of-state home and other debts. His earnest debt consolidation efforts and overall stabilization of his finances over the previous three years are sufficient to meet mitigation requirements imposed by the AGs governing his finances.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.m:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

