



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 11-08633

Appearances

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

10/31/2013

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 Case

On May 3, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for a security clearance, and 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 DOD on September 1, 2006.

Applicant responded to the SOR on June 6, 2013, and requested a hearing. The case was assigned to me on July 31, 2013, and was scheduled for hearing on September 5, 2013, by video teleconference. At hearing, the Government's case consisted of eight exhibits (GEs 1-8). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on September 13, 2013.

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 state tax returns for tax years 2005 through 2008 and payment documentation covering creditors 1.j, 1.p, and 1.s. For good cause shown, Applicant was granted seven days to supplement the record, The Government was afforded two days to respond. Within the time permitted, Applicant documented a zero balance with his state's taxing authority. He provided no payment documentation and indicated he was still considering petitioning for bankruptcy relief. Applicant's submission was admitted as AE A.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) filed for Chapter 13 bankruptcy relief in December 2001 (discharged May 2005); (b) failed to file a state tax return in tax year 2008 as required; (c) accrued unpaid Federal taxes of \$7,814 for tax years 2009 and 2010; (d) accrued unpaid state taxes of \$1,197 for tax years 2005 and 2007; and (e) accumulated 15 delinquent consumer debts exceeding \$35,000.

In his answer to the SOR, Applicant admitted most of the alleged debts. He denied the allegations covered in subparagraphs 1.d, 1.h, 1.j, 1.p, and 1.s. with explanations. He claimed he owed no taxes as alleged in subparagraph 1.d. He claimed no knowledge of the debts covered in subparagraphs 1.h and 1.p. And he claimed the debts alleged in subparagraphs 1.j and 1.s have been paid.

Findings of Fact

Applicant is a 43-year-old operations technician 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 May 1995 and has two children and two stepchildren from this marriage: ages 16, 17, 22, and 23. (GE 1) Applicant attended one semester of trade school and earned credits from a technical college but no diploma. (GE 1)

Applicant enlisted in the Marine Corps in June 1988 and completed 17 years of active duty before receiving an honorable discharge in March 2005. (GE 1) While on active-military duty, he earned numerous medals and commendations recognizing his service. (GE 3; Tr. 28-29)

Applicant's finances

Prior to 2001, Applicant and his wife lived beyond their means and accumulated a number of delinquent credit card debts. (GEs 3-7; Tr. 32-33) After his wife lost her job, they did not have sufficient income to pay their bills in a timely way. Faced with difficulties paying their regular bills, they petitioned for Chapter 13 bankruptcy relief in 2001 and received their discharge in May 2005. (GE 8; Tr. 30-31)

Following their Chapter 13 discharge, Applicant and his wife continued to use their credit cards to purchase clothes and other material items. (Tr. 35-37) His wife continued to handle their finances during Applicant's military deployments. In 2005, she was diagnosed with a bi-polar disorder, placed on a medication regimen, and never returned to work. (Tr. 33-35, 41)

After failing to file their state income tax return for 2005, they became delinquent with their unpaid Federal taxes of \$7,814 for tax years 2009 and 2010 and unpaid state taxes of \$1,197 for tax years 2005-2008. (GEs 3-7) Applicant has since paid off his state taxes owed for these tax years and commenced paying his owed Federal taxes. (AE A; Tr. 26, 43-47) Because he failed to furnish any documentation of his Federal tax payments, his payment history cannot be quantified or verified.

Applicant disputes several of the listed consumer debts in the SOR. He claims he paid the debts owed to creditors j and s. (Tr. 57-58) And he denies any knowledge of the debts associated with creditors 1.h and 1.p. (GE 3; Tr. 56-57) He provided no documentation, though, to corroborate his claims.

Between 2009 and 2010, Applicant's wife continued to spend excessively and was convicted of shoplifting. (Tr. 35) Unbeknownst to Applicant, his wife accumulated numerous credit card debts on clothing purchases for her two daughters. (Tr. 36-37)

Before going to jail in 2012 for probation violation on domestic violence charges, Applicant's wife contacted a number of creditors to explore settlement arrangements, but had no success. (GEs 3 and 4; Tr. 38-39, 59, 65-66) Since she returned from jail, Applicant has assumed financial responsibility for their household debts. (Tr. 60-62) He explored debt consolidation but found the process not useful to his needs. (Tr. 61)

Applicant remains hopeful of working out payment plans with his remaining creditors who he expects to contact. (Tr. 40-41, 61-62, 66) He does not expect much financial assistance from his wife. (Tr. 41)

Currently, Applicant has small savings and checking accounts and a small 401k investment account. (Tr. 62-63) He maintains a modest monthly remainder, which he uses to pay his bills. (Tr. 63-64) He has considered seeking bankruptcy protection as an effective option for discharging his debts. (GE 3) However, to date, he has not initiated any bankruptcy process and has made no commitments to doing so. (AE A; Tr. 67)

Endorsements

Applicant provided no character references. He did not furnish any performance evaluations or proof of community and civic contributions.

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."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, 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 revised AGs, which are 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. The following AG ¶ 2(a) factors are pertinent: (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 individual guideline is pertinent in this case:

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. (AG, ¶ 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).

Analysis

Security concerns are raised over Applicant's history of delinquent debts and financial instability, marked by a Chapter 13 petition and discharge, failure to file a state tax return, unpaid Federal and state taxes, and delinquent consumer accounts. He has since paid several debts, including his back state taxes, and two consumer debts. And

he disputes two other debts. Still, he has no established plan to address his remaining debts. Nor has he sought debt consolidation or financial counseling.

Historically, Applicant encountered considerable difficulties in addressing his delinquent Federal and state income taxes and taking care of his consumer obligations. His financial issues 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 ¶ 19(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 also implicit in financial cases.

Applicant's identified periods of living beyond his means and deferring to his spouse in managing his finances are not sufficient to extenuate his accrued debt delinquencies. While his wife's diagnosed bi-polar disorder has limited his family income in recent years, her condition entitles Applicant to only partial application of MC ¶ 20(b), "the conditions that resulted in the financial problem 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." Without a documented diagnosis and treatment regimen for his wife, the severity of her condition and ability to work cannot be evaluated.

Full mitigation is also lacking in Applicant's payment initiatives to date. While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). This, Applicant has failed to do.

To his credit, Applicant completed the Chapter 13 petition he initiated in 2001 and satisfactorily resolved his state tax debt. However, he has failed to document his remaining disputed debts (four in all) and failed to establish a workable and realistic plan to resolve his remaining debts. Minimal mitigation initiatives necessary to meet Appeal Board requirements are not demonstrated in Applicant's case.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances played a role in Applicant's accumulation of delinquent debts. Less clear is how his economic circumstances prevented him from better addressing his tax and consumer debts and other accrued obligations. He still owes in excess of excess of \$7,814 to the IRS for tax years 2009 and 2010 and owes more than \$35,000

in delinquent consumer debts. While he has successfully repaid his back state taxes, he still retains outstanding delinquent IRS and consumer debts without any established plan for repayment. Moreover, he has not pursued other viable repayment options such as debt consolidation and financial counseling assistance.

Overall, Applicant demonstrates some progress in stabilizing his finances with his past completion of his 2001 Chapter 13 plan and repayment of his past-due state taxes. His efforts to date are insufficient, however, to meet mitigation requirements imposed by the guideline governing his finances. At this time, it is premature to make safe predictable judgments about the future course of Applicant's 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 (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.c, 1.e through 1.g, 1.i, 1.k through 1.o, 1.q, and 1.r	Against Applicant
Subparas. 1.a and 1.b, 1.d, 1.h, 1.j, 1.p, and 1.s	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

