



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-10508

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

05/20/2013

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

History of the Case

On November 30, 2012, 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 granting 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 the DOD on September 1, 2006.

Applicant responded to the SOR on December 31, 2012, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 1, 2013, and did not respond to the FORM. The case was assigned to me on April 16, 2013.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated six delinquent debts exceeding \$132,000. In his response to the SOR, Applicant admitted one of the allegations (creditor 1.a for \$9,385) but denied the remaining allegations. He claimed he was negotiating with creditor 1.a and will pay the debt before February 2013.

Findings of Fact

Applicant is a 69-year-old analyst for a defense contractor who seeks a security clearance. The allegation covered in the SOR and admitted to by Applicant is adopted as a relevant and material finding. Additional findings follow.

Background

Applicant married in February 1968 and has two adult children (one adopted) from this marriage. (Item 3) He earned college credits and claims no degree or diploma. (Item 3) Applicant enlisted in the Navy in July 1963 and served 18 years of active duty before receiving an honorable discharge in October 1991. (Item 3) During his Navy enlistment, he held a top secret security clearance. (Item 6)

Applicant's finances

Following a corporate layoff in 1999/2000, Applicant relied on credit cards to cover living expenses for himself and his son, who was underemployed at the time. (Item 6) By 2008, Applicant's credit card debts had escalated to unmanageable levels. (Item 6) His credit reports document that he opened most of the listed credit card accounts between September 2003 and February 2008. (Item 7) Altogether, he opened some 22 consumer accounts between May 2001 and March 2011, inclusive of credit cards, mortgage, and auto accounts. (Item 7)

To settle his credit card debts, Applicant engaged a credit settlement company in 2009. (Item 6) By June 2012, he had settled and paid most of his listed creditors holding delinquent credit balances. (Item 3) In September 2009, he settled and paid his debt to creditor 1.b. (Item 3) It is not clear whether he paid this creditor the full amount owing (\$25,000), or a lesser amount. Applicant settled his listed \$30,844 debt with creditor 1.c in July 2011 for the reduced amount of \$11,957. (Item 3) Although he claims payment of the agreed amount, he provides no documented receipt of payment.

In July 2011, Applicant settled his \$39,371 creditor 1.d debt for the reduced amount of \$16,000. (Item 3) His July 2011 acknowledgment letter from the creditor confirmed receipt of Applicant's liquidated payment of \$16,000 in full payment of the debt. (Item 3) Applicant settled his \$5,176 creditor 1.e debt in October 2011 for the lesser amount of \$4,496 and documented his payment of the debt for the agreed amount. (Item 3) And in June 2012, Applicant settled his debt with creditor 1.f in full and documented payment to the creditor in an unspecified amount. (Item 3) How much Applicant paid creditor 1.f to settle his debt is unclear from the creditor's correspondence.

Applicant's debt with creditor 1.a for \$9,385 is unpaid and unresolved. Applicant claimed in his answer to be working with the creditor to settle the debt. His creditor 1.a debt remains unresolved.

Unclear from Applicant's summary of his OPM interview is how he acquired the funds to satisfy the creditors listed in the SOR. Possibilities include funds from savings and retirement accounts, funds from family members in Japan, or funds from other undisclosed sources. His credit reports reflect mortgages on different properties, but none of recent creation. (Items 7 and 8) Altogether, Applicant documents detailed payments to four of his listed creditors in excess of \$20,000. Payments on three of his settled debts were not specified or detailed.

Applicant's financial status cannot be readily determined from available documentation. His furnished personal financial statement reports net monthly income of \$4,999 (inclusive of his spouse's earnings), monthly expenses of \$1,945, and monthly debt payments of \$3,044. (Item 6). This leaves him with a net monthly remainder of just \$10. (Item 6) He shows assets totaling \$108,000, which comprise his bank savings (\$90,000), stocks/bonds (\$3,000), and a car/boat (\$15,000). He reported \$402,000 in real estate mortgages on property worth about \$300,000. (Item 6)

Endorsements

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any 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.

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 individual guidelines are 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 listed delinquent debts, his failure to document payment of several of the listed debts, and where and how he obtained the funds to satisfy the five creditors he settled with.

Following his layoff in 1999/2000, Applicant was unemployed for some unspecified period. With his available funds he sustained himself and aided his son (also unemployed). By 2008, though, he had fallen far behind with his creditors and accumulated delinquencies with six of his listed creditors. Records show he settled five of his listed debts with funds from unidentified sources, and satisfied two of the debts with documented payments. This leaves one debt unresolved, two debts claimed to be settled, but undocumented as to the payment amounts, and one debt settled, but not documented as to payment.

Applicant’s accumulation of credit card debt delinquencies and his past inability to identify his payment sources raise some potential security concerns about his judgment, reliability, and trustworthiness in managing his finances. His actions warrant the application of three of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), “inability or unwillingness to satisfy debts;” DC ¶ 19(c) “a history of not meeting financial obligations;” and DC ¶ 19(h), “unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject’s known legal sources of income.”

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.

While potentially extenuating, Applicant’s periods of unemployment in 1999/2000 are too dated to have any material bearing on his current financial difficulties with his debts. As a result, none of the mitigating conditions covering potential extenuating circumstances have any application to Applicant’s situation.

From a whole-person standpoint, the evidence shows that unfortunate economic circumstances in the 1999/2000 time frame played some initial role in Applicant’s

inability to keep up with his consumer debts. Less clear is how these periods of unemployment contributed to his delinquent debt accumulations in 2008. His submissions document his settling most of his listed debts. Still unresolved are his listed debt with creditor 1.a, his payments to three of his five settled debts (i.e., creditors 1.b, 1.c, and 1.f), and his payment sources. Overall, he demonstrates progress in stabilizing his finances with his settlement initiatives and documented payments to two of his listed creditors. His efforts to date are insufficient, however, 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 (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a through 1.f:

Against 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

