



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-12627

Appearances

For Government: Caroline Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

09/23/2013

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 March 6, 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 April 11, 2013, and requested a hearing. The case was assigned to me on May 14, 2013, and was scheduled for hearing on June 13, 2013, by video teleconference. At hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (himself) and nine exhibits (AEs A-I). The transcript (Tr.) was received on June 24, 2013.

Following my June 21, 2013 decision in the case, Applicant filed a timely appeal. On September 18, 2013, the Appeal Board remanded the case with instructions to address a character letter furnished by Applicant before the close of the record and prepare a new decision incorporating findings covering the additional character letter.

Procedural Issues

Prior to the hearing, Applicant emailed an unsigned character reference from a coworker to Department Counsel. (AE J; Tr. 22, 27) He indicated at hearing that he wanted to supplement the record with the emailed character reference. (Tr. 22, 27, 92) Shortly after the hearing, Department Counsel emailed Applicant's pre-hearing enclosure of an emailed endorsement from a second coworker. Department Counsel interposed no objection to Applicant's submission, and for good cause shown, the endorsement is admitted as AE J.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 10 delinquent consumer debts exceeding \$25,000 (inclusive of an entered adverse judgment of \$1,985). Additionally, he allegedly accrued a delinquent mortgage debt in 2007.

In his answer to the SOR, Applicant admitted most of the allegations. He denied the allegations covered in subparagraphs 1.a and 1.j. He claimed he has made payments on two of the covered debts (creditors 1.h and 1.l) and cured the mortgage default covered in subparagraph 1.k with a short sale in 2007. He claimed he made contact with the remaining creditors but has made no payment progress with these remaining creditors.

Findings of Fact

Applicant is a 33-year-old employee 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 2006 and has four children from this marriage: three children together and one stepchild. (GEs 1 and 2; Tr. 33). He was awarded a bachelor's degree in psychology in May 2000 from a recognized state university. (GE 1; Tr. 78) He also claims educational credits for technical training between October 2010 and October 2011, helicopter flight training between January 2007 and June 2007, and

post-graduate studies. (GEs 1 and 2; Tr. 37-38, 83) Applicant reports no military service. (GE 1; Tr. 33, 80-81)

Applicant's finances

Between 2007 and 2010, Applicant accumulated a number of delinquent debts during recurrent periods of unemployment. (GE 2; Tr. 34-36) Altogether, he accrued 10 delinquent debts exceeding \$17,000. (GEs 2-5) They are comprised of the following delinquent accounts: creditor 1.a (\$629); creditor 1.b (\$2,762); creditor 1.c (\$1,994); creditor 1.d (1,998); creditor 1.e (\$2,361); creditor 1.f (\$3,517); creditor 1.g (\$1,500); creditor 1.h (\$8,545); creditor 1.i (\$239); and creditor 1.j (\$1,985) (GE 2 and AEs C-I; Tr. 41-64). Further, in 2007 he was defaulted by his mortgage holder. (GE 2; Tr. 69-70) For the most part, applicant relied on charge-offs and statute of limitations protections to resolve his debts. (GEs 2-5; Tr. 63-64)

Since he received the SOR, Appellant has addressed several of his debts. (AEs C-I; Tr. 32) He established a payment plan with creditor 1.c and documents making two \$200 payments to this creditor since April 2013 in connection with a deficiency balance from a repossessed vehicle. (AE C; Tr. 48-51, 58-62, 66-67) He paid the medical account covered in subparagraph 1.i with a \$241 payment in April 2013 (AE F; Tr. 47, 60, 68), and he has made two payments of \$284 and \$372, respectively, to creditor 1.h. (AEs E and G; Tr. 55-59)

But Applicant has failed to make any further headway with the balance of creditors covered in the SOR. Several of the covered creditors have not responded to Applicant's inquiries. These debts (i.e., creditors 1.a, 1.b, 1.d, 1.e, and 1.g) are presumably charged-off and have not been pursued by the creditors owning these debts. The remaining debts covered by the SOR have not been addressed by Applicant and remain outstanding obligations. To date, Applicant has paid close to \$1,300 on his listed debts.

Besides his consumer debts, Applicant had an adverse judgment taken against him in December 1999 by creditor 1.j in the amount of \$1,985. (GE 2) More recently (in April 2013), the judgment creditor dismissed him from the judgment and furnished him a satisfaction of judgment. (AE H; Tr. 68-69) The entered dismissal was based on reasons other than the payment of money. (Tr. 69)

In 2007, Applicant accrued delinquencies in his mortgage (creditor 1.k) during a period of unemployment. (GE 2) In 2007, he received a default notice on his mortgage. (GEs 2 and 6; Tr. 70) At the time, he was enrolled in helicopter training and got behind in his mortgage payments. (Tr. 70) He arranged for a short sale of his home the same year and is not aware of any deficiency obligations associated with the sale. (Tr. 70-71)

In a 2012 personal financial statement, Applicant reported net monthly income of \$6,000 a month. (GE 2; Tr. 71-77) He reported personal expenses of \$2,082 and over \$400 in debt payments. (GE 2; Tr. 72-75) He estimates his monthly expenses have increased by almost \$700 a month, and he has no savings. (Tr. 71) Applicant has no

established plan for resolving his outstanding debts or seeking financial counseling. Still, he assured that he lives within his means and has stable finances. (Tr. 32)

Endorsements

Applicant provided two character references from coworkers, who have known Applicant for many years. The first coworker values Applicant's abilities and integrity and recommended him for a position of trust. (AE A) A second coworker, who has worked with Applicant for a year, described him as upstanding, honest, and hard working. He credited Applicant with being the administrative lead for a training division of a substantial military program, and further credited him with being responsive, responsible, and trustworthy. (AE J)

Applicant provided no endorsements from his supervisors or management officials. Nor did he provide 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.

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 consumer debts, an adverse judgment, and a mortgage default. Since accruing these delinquent debts, Applicant has been able to settle five of the debts (i.e., creditors 1.c and 1.h through 1.k). Still, he has no established plan for addressing his remaining debts or seeking financial counseling.

Applicant’s accumulation of delinquent consumer debts, an adverse judgment, and mortgage delinquencies, and his inability to address most of his consumer debts 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.

While potentially extenuating, Applicant’s identified periods of unemployment were not fully developed and are not sufficient to extenuate his accrued debt delinquencies. As a result, none of the mitigating conditions covering potential extenuating circumstances have any application to Applicant’s situation. 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.

While Applicant has satisfactorily resolved five of the eleven debts with documented payments, judgment satisfaction, and an approved short sale of his residence, he has failed to establish a workable and realistic plan to resolve his remaining debts and still owes in excess of \$22,000 on his listed delinquent debts. Minimal mitigation initiatives necessary to meet Appeal Board requirements are not demonstrated in Applicant’s case.

In the past, Applicant has relied on charge-offs and statute of limitation protection. Statutes of limitation, while considered important policy tools for

discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). They do provide effective collection barriers and, like bankruptcy, serve to insulate the debtor from pressures to raise cash to satisfy his or her creditors.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances played a role in his accumulation of delinquent debts. Less clear is how his economic circumstances prevented Applicant from better addressing his consumer debts and other accrued obligations. He still owes in excess of \$22,000 on the aggregate of debts listed in the SOR and over \$12,000 on his unresolved debts. While he has made some modest headway in repaying several of his listed consumer debts, and has successfully obtained a satisfaction of judgment and an approved short sale of his residence, he still retains outstanding delinquent debts without any established plan for repayment or obtaining financial counseling assistance.

To his credit, Applicant is well-regarded by colleagues who have worked with him and are impressed with his honesty, hard work, and trustworthiness. He has demonstrated some progress, too, in stabilizing his finances with his settlement initiatives, successful satisfaction of an adverse judgment, approved short sale, and documented payments to three of his listed creditors. 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.a, 1.b, and 1.d through 1.g:	Against Applicant
Subparas. 1.c and 1.h through 1.k:	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

