



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-00945

**Appearances**

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

11/26/2013

**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 Case**

On June 28, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the 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 July 29, 2013, and requested a hearing. The case was assigned to me on September 6, 2013, and was scheduled for hearing on September 25, 2013. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and one exhibit (AE A). The transcript (Tr.) was received on October 3, 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 documented credit card transfers and debt payments. For good cause shown, Applicant was granted 14 days to supplement the record, The Government was afforded two days to respond. Within the time permitted, Applicant provided a cover summary and copies of an updated personal financial statement, payment histories with payment plans, and a character reference. Applicant's submissions were admitted as AEs B-M.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 12 delinquent medical and consumer debts. The alleged debts exceeded \$43,000.

In his answer to the SOR, Applicant admitted two of the listed debts: creditors 1.c (\$264) and creditor 1.j (\$10,209). He denied the remaining listed debts, claiming payment (creditors 1.a, 1.b, and 1.g); completed payment agreements (creditors 1.d through 1.f, 1.i, and 1.l); erroneous amounts alleged (creditor 1.h); and lack of verification of the debt's validity (creditor 1.k)

### **Findings of Fact**

Applicant is a 62-year-old multimedia design 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 March 1971 and has two children from this marriage. (GE 1) He divorced his first wife in December 1977. (GE 1) He married again in December 1978 and has two children from this marriage. (GE 1) He divorced his second wife in March 1991. (GE 1) In May 1991, Applicant married his third wife. He divorced her June 1992 and has no children from this marriage. (GE 1) Applicant married his current wife in March 2000 and has no children from this marriage; although he does have several stepchildren. (GEs 1 and 2)

Applicant enlisted in the Navy in January 1971 and served almost seven years of active duty as a Navy enlistee before receiving his honorable discharge in December 1978. (GE 1) He was commissioned as a Navy officer in December 1978 and served an

additional six years before receiving his honorable discharge in February 1984. (GE 1) While on active-duty, he completed his degree requirements under the Navy's enlisted scientific education program. (GE 1)

### **Applicant's finances**

Before 2009, Applicant and his wife held well-paying jobs and maintained good credit. In 2009, Applicant paid \$38,000 to creditor 1.j for an SUV and financed it with monthly payments of \$700. (Tr. 31-32, 39-40) And for the first 18 months they were able to keep their monthly payments current. (GE 2)

In 2009, Applicant's current wife, who sells printer supplies on commission, experienced a significant reduction in her annual earnings from a base earnings level of \$53,353 in 2007 to just \$33,798 in 2010. (GE 2; Tr. 23, 34-37, 44) He attributed her earnings reductions to business downturn conditions and reorganizations by her account customers. (GE 2 and AE B; Tr. 23)

Between December 2009 and mid-2010, Applicant and his wife struggled to meet their financial obligations, and sometimes were unable to fulfill their responsibilities. In 2010, Applicant met with his creditors and developed a plan of action to repay his past-due creditors and close his outstanding accounts. (GE 2) As a part of their continuing efforts to stabilize their finances, Applicant explored financial counseling, but without success, and even surrendered the SUV that he and his wife had purchased from the lender in 2010. (GE 2; Tr. 41-42).

After the SUV was sold at public auction by the repossessing lender, Applicant was left with a \$10,209 deficiency balance with creditor 1.j. (Tr. 31, 42) He offered the creditor \$50 to \$100 a month to settle the deficiency claim, but has not heard anything from the creditor to date. (Tr. 31, 42) He will continue to reach out to this creditor in his efforts to complete a payment plan with the creditor.

Without the benefit of financial counseling or debt consolidation, Applicant and his wife worked earnestly to catch up with their delinquent accounts and even permitted the repossession of one of their vehicles to stabilize their debts. (GE 2; Tr. 41-42) And by September 2011, Applicant and his wife had made some progress in repaying several of their outstanding debts. (GE 2)

Still, Applicant and his wife remained in debt with a number of their creditors after September 2011. (GE 2) Credit reports corroborate Applicant's having delinquent debts (some in collection or charged off) with creditors holding medical and consumer accounts with Applicant and his wife. Altogether, Applicant accumulated delinquent debts between 2009 and 2011, exceeding \$43,000. (GEs 3-5)

Since 2011, Applicant has completed payment plans with a number of creditors. His proofs document a payment plan with creditor 1.d, which reveals \$50 monthly payments totaling \$1,650 since December 2010 and a reduced balance of approximately

\$1,100. (AE D). His post-hearing submissions document payment plans with creditor 1.e (\$60 monthly payments on a \$7,816 balance); creditor 1.f (\$25 monthly payments on a \$7,124 balance); and creditor 1.i (\$38.89 monthly payments on a \$260 balance). Applicant's proofs also show pay-offs of reported debts with creditors 1.a (\$24), 1.b (\$97), and creditor 1.g (\$1,379). Applicant's payments reduce his overall delinquency total by a little less than \$5,000, or a little more than 10 per cent of the aggregate of listed debts in the SOR. (GEs 2-5 and AEs D-G; Tr. 29-33) Additionally, he has made payments to several non-listed creditors. (AEs H-K)

Several of Applicant's listed debts remain outstanding without any payment plans in force. One of the debts is a charged-off debt with creditor 1.h in the amount of \$8,984. (GEs 2-5) He claims he has a settlement offer from this creditor to make monthly payments, and is hopeful of doing so. (Tr. 28-29) He is hopeful, too of working out payment plans with his remaining creditors (i.e., creditors 1.c, 1.i, and 1.j).

In 2008, Applicant and his wife grossed \$154,257 and reported credit debt of \$103,758. (GE 2; Tr. 33) He acknowledged that he and his wife were living beyond their means during this reporting period. (GE 2; Tr. 34) By 2010, his wife's net monthly income had decreased to less than \$3,000 a month. (Tr. 34)

With their decreased income, Applicant and his wife took steps to cancel most of their credit cards. (Tr. 35-36) By 2013, he and his wife were able to reduce their overall credit debt to around \$78,000, exclusive of the car deficiency covered in subparagraph 1.j. (GEs 3-5; Tr. 37-38)

Currently, Applicant nets around \$4,856 a month from his job. (AE C; Tr. 44) His wife nets about \$2,000 a month from her commission sales. (AE C; Tr. 43) With monthly debts and expenses totaling \$7,553, Applicant and his wife have a net minus monthly remainder of \$697. (AE C)

## **Endorsements**

Applicant provided a character reference from a police department veteran and friend who expressed high regard for Applicant's core values of honesty, loyalty, and integrity. (AE M) This friend credited Applicant with being a person of high character and above all a loyal U.S. citizen. (AE M)

## **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, 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 periods of living beyond his means and accumulating over \$43,000 in delinquent debts over a three-year period. He has since paid off several debts and has established payment plans with a number of his creditors.

Historically, Applicant encountered considerable financial strains after his wife experienced income losses due to decreased commission sales in the 2009-2012 time frame. His financial issues raise 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(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash-flow, high debt-to-income ratio, and/or other financial analysis.”

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 explicit in financial cases.

Applicant's identified periods of living beyond his means and leaving no margin for reduced earnings placed too much dependence on his wife's earnings capabilities. While his wife's earnings losses could reasonably be expected to limit his ability to manage his family's finances, they are not enough by themselves to extenuate his accrued debt delinquencies. His wife's earnings losses entitle Applicant to some 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."

Mitigation is demonstrated, though, 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). Applicant has demonstrated considerable progress with his debts through the pay-offs he has made with several creditors and with the payment plans he has established and serviced with five of the listed creditors in the SOR. MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," applies to Applicant's situation.

To his credit, Applicant has established a considerable track record of payments with most of his creditors and hopes to complete payment plans with his remaining creditors. His payments to date have reduced his aggregate debt total by close to \$5,000 and reflect satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

In considering whether Applicant acted reasonably when dealing with his financial difficulties caused in part by his wife's reduced earnings, consideration was accorded Applicant's maintained contact with his creditors and the payoffs and modest payment plans he was able to arrange with a number of them. His actions satisfied a major component of the criteria established by the Appeal Board to gauge an applicant's payment initiatives. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan., 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999). Minimal mitigation initiatives necessary to meet Appeal Board requirements are met in Applicant's case.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances associated with Applicant's accumulation of delinquent debts. He is credited with 13 years of active military service and is well-regarded by a police department veteran and friend who is familiar with Applicant's habits of honesty, loyalty, integrity in his work and personal life. Applicant has since made steady inroads in

stabilizing his finances and shows good prospects for paying off his debts and restoring his finances to acceptable levels.

Overall, Applicant demonstrates considerable progress in stabilizing his finances with his payment initiatives. His efforts to date are sufficient to meet mitigation requirements imposed by the guideline 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): FOR APPLICANT

Subparas. 1.a through 1.i: 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.

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Roger C. Wesley  
Administrative Judge



