



**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. 14-04926

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

09/22/2016

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his finances. Eligibility for access to classified information is denied.

**History of the Case**

On April 20, 2015, Department of Defense (DOD) Consolidated Adjudication Facility (CAF) 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 (Exec. Or. 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 June 12, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on September 29, 2015, and responded to the FORM within the time permitted with documented explanations of his tax payments for 2004 and current IRS account status of his 2008-2011 federal taxes. Applicant's submission was admitted as Item 9. The case was assigned to me on May 24, 2016.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accrued approximately \$30,000 in delinquent federal taxes for the tax years 2004, 2008, 2009, and 2011; (b) incurred three adverse judgments: one in May 2014 for \$7,351, another in 2008 for \$1,206, and another in 2009 for \$1,717; and (c) accumulated five delinquent debts (including \$3,030 in child support payments) exceeding \$7,000. Allegedly, each of the listed delinquent debts remain outstanding.

In his response to the SOR, Applicant admitted some of the allegations, but denied others. He claimed several of the listed debts were paid: debts covered by subparagraphs 1.c and 1.e. He claimed to be attempting settlement arrangements with creditors covered by subparagraphs 1.d, 1.f, 1.h, and 1.i. And he claimed the debts covered by subparagraphs 1.a and 1.b are being paid involuntarily through garnishment.

### **Findings of Fact**

Applicant is a 51-year-old aircraft helper for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married in May 1993 and divorced in October 2003. (Item 1) He reported no children from this marriage, but claimed he was indebted for past child support.

Applicant claimed no post-high school education credits and no military service. (Item 1) He has worked for his current employer as an aircraft helper since April 2012. (Item 1) Between July 2011 and April 2012 he was unemployed. Previously, he worked for a defense contractor as a supply technician (March 2008 through July 2011) and for a warehouse supply firm (January 2007 through March 2008) as a warehouse distribution manager. (Item 1)

#### **Finances**

Applicant accumulated delinquent federal taxes for tax years 2004 and 2008-2011 in excess of \$30,000. He attributed his 2004 delinquent tax accruals to his divorce and his ex-spouse's unwillingness to share their 2004 joint tax obligations, which were

relatively high for that year (around \$25,000). (Item 8) With his limited income during the 2008-2011 time frame, he was unable to follow through with his satisfaction of the taxes jointly owed for the 2004 tax year. (Item 8)

Applicant made payment arrangements with the IRS in 2012 to meet his outstanding tax obligations, but failed to follow through by any identified means, once again for lack of funds. (Item 8) He estimated he owed back federal taxes as follows: for 2008 (\$3,000), for 2009 (\$2,000), for 2010 (\$5,000), and for 2011 (\$2,000). (Item 8)

In July 2012, Applicant set up a payment plan with the IRS and commenced making monthly payments of \$300 a month. (Item 8) He could not document the payments he has made to the IRS for the tax years in issue. Beginning in 2013, the IRS initiated garnishment of Applicant's wages in the amount of \$1,000 bi-weekly. (Items 2 and 8) It remains unclear how much he has paid to date in back federal taxes. His payment credits to date reveal no more than \$2,000 paid to the IRS, enough to cover only his 2004 tax obligations. (Item 8) His installment agreement with the IRS reveals that \$1,846 was paid, leaving a remaining balance of \$11,959 owing for tax years 2008-2011. (Item 9)

Besides his tax debts to the IRS, Applicant accrued several adverse judgments between 2008 and 2014. (Items 1-3 and 4-5) Records document that he incurred a judgment from creditor 1.b in the amount of \$7,351 in May 2014 that has been satisfied in part (\$2,055) through involuntary garnishment. (Item 2) How much is still owing on this judgment is unclear. Applicant incurred an adverse judgment from creditor 1.h in 2008 in the amount of \$1,206 and an adverse judgment from creditor 1.i in 2009 in the amount of \$1,717. (Items 4-5) Neither of these judgments have been addressed to date.

Other debts accumulated by Applicant include three medical debts totaling \$345 (creditors 1.c-1.e) and a utility debt with creditor 1.f in the reported amount of \$751 (creditor 1.f) These debts have not been addressed by Applicant and remain outstanding. (Items 2-4)

Applicant also accumulated child support arrearage with his state's responsible child support agency in the approximate amount of \$3,030. Records document that this arrearage has been satisfied in part through bi-weekly garnishment levies. (Item 2) Applicant did not provide documentation of how much of his child support arrearage has been collected through involuntary garnishment proceedings, or paid by voluntary means, if any.

### **Endorsements**

Applicant provided no character references on his behalf, either with his answer or with his response to the FORM. Nor did he furnish any evidence of counseling and budgeting, performance evaluations or evidence 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."

The AGs 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 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 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**

Applicant is a fully employed aircraft helper for a defense contractor who accumulated delinquent debts exceeding \$43,000. One of the listed debts covers delinquent federal taxes in excess of \$30,000 for tax years 2004 and 2008 through 2011, of which only his 2004 tax delinquencies have been satisfied to date. Applicant's listed debts include one outstanding judgment with creditor 1.b which currently is being addressed through involuntary garnishment. His remaining debts consist of two outstanding judgments, three medical debts, a utility debt, and child support arrearage. Little voluntary progress has been made on these debts. Garnishment levies have resulted in some reduction of his tax debts (including the elimination of his 2004 tax year delinquency, creditor 1.b judgment debt in part through garnishment, and his child support arrearage in part through garnishment).

Applicant's collective accumulation of delinquent debts 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 obligation," apply to Applicant's situation.

Applicant's pleading admissions with respect to his accumulation of unaddressed delinquent debts covered in the SOR negate the need for any independent proof (*see McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are fully documented in his credit reports.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. *See Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Inferentially, Applicant's delinquent debts are attributable for the most part to financial complications from his divorce. Without more information from Applicant about his debt delinquencies and the status of his remaining debts, more detailed assessments cannot be made. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve his debts. Partially available to Applicant is 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."

What is not clear from this developed record are the specifics of Applicant's circumstances preceding his accrued tax and medical debts, adverse judgments, other accrued debts, and accumulated child support arrearage. Without documentation of the circumstances that gave rise to his falling behind with his debts and his multiple failures to address his debts and avoid garnishment, mitigation credit is not available to Applicant based on the evidence developed in the record. To date, he has taken insufficient corrective steps to resolve his delinquencies and demonstrate he acted responsibly in addressing his listed debts. *See ISCR Case 03-01059 at 3* (App. Bd. Sep. 24, 2004).

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent federal taxes, adverse judgments, and other debts and failure to resolve them. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances and are not demonstrated sufficiently to meet minimum eligibility criteria for holding a security clearance.

Character references, performance evaluations, and evidence of community contributions are not available to more evaluate Applicant's overall trustworthiness,

reliability, and judgment. While unanticipated financial burdens might have played a considerable role in his failures to address his delinquent debts, Applicant failed to provide more specific explanatory material for consideration.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his lapses in judgment associated with his accumulation of delinquent tax, judgment, and other debts

More time is needed to facilitate Applicant's making the necessary progress with his creditors to facilitate conclusions that his finances are sufficiently stabilized to permit him access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.i.

### **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.i:

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.

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Roger C. Wesley  
Administrative Judge

