



**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. 15-02734

**Appearances**

For Government: Andre M. Gregorian, Esquire, Department Counsel

For Applicant: *Pro Se*

01/30/2017

**Decision**

WESLEY, Roger C., Administrative Judge:

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

**History of Case**

On October 22, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on January 4, 2016, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) in February 2016, and responded to the FORM with supplemental information within the 30 days permitted. Applicant's submissions were comprised of the following: appearance and satisfaction of state traffic tickets in April and July 2013, state franchise tax board billing and payment notice for tax year 2009, state franchise tax board refund notices for tax years 2013 and 2014, federal tax refund notices for tax years 2013 and 2014, and letter from non-SOR creditor. Applicant's submissions were admitted as Items 6-9. The case was assigned to me on September 12, 2016.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly incurred a state tax lien in 2011 for \$3,357 and (b) accumulated 16 delinquent consumer debts in excess of \$19,000. Allegedly, each of the listed debts remain outstanding.

In his response to the SOR, Applicant admitted most of the listed debts. He denied the following allegations: SOR ¶ 1.a (debt was satisfied); SOR ¶ 1.e (duplicate of SOR ¶ 1.b); SOR ¶ 1.g (disputed debt); SOR ¶ 1.j (debt paid off); SOR ¶ 1.l (uncertainty about the debt); SOR ¶¶ 1.m and 1.n (duplicates of SOR ¶ 1.d); SOR ¶ 1.o (duplicate of SOR ¶¶ 1.b and 1.e); and SOR ¶ 1.p (uncertainty about the debt).

### **Findings of Fact**

#### **Background**

Applicant is a 35-year-old help-desk contractor of 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.

Applicant married in June 2006. (Item 2) He has no listed children from this marriage. (Item 3) He claimed no educational credits beyond high school and no military service. (Item 3)

Applicant has worked for his current employer since October 2012. (Item 3) Between April 2010 and October 2012, he was employed part-time as an operator for a non-defense landscaping firm. He provided intermittent part-time work for this firm but was never employed on a full-time basis. (Item 3)

#### **Finances**

Between April 2010 and October 2012, Applicant accumulated a number of delinquent debts during periods of intermittent part-time work. Records reveal he incurred a state tax lien of \$3,357 in August 2011 covering tax years 2008 and 2009. (Items 3-5) Additionally, he accumulated 16 delinquent debts approximating \$20,000. (Items 3-5)

Applicant documented his satisfying the tax debts covered by his 2011 state tax lien. (Item 7) This lien was satisfied in part by garnishment of Applicant's wages, leaving a balance owing of \$1,182 as of May 2015. (Item 7) Applicant's refunds of \$462 for tax year 2013 and \$998 for tax year 2014 covered the balance of the amount owing for tax years 2008 and 2009. (Item 8) Applicant did not provide any evidence of payments or resolution of any of the remaining debts listed in the SOR.

## **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 *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). 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**

Applicant is a help-desk contractor of a defense contractor who accumulated a number of delinquent debts (to include a state tax lien) during an extended period of underemployment between April 2010 and October 2012. His accumulation of delinquent debts and his past inability and unwillingness to address these 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 obligations.”

Applicant’s pleading admissions of the 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 latest credit reports and provide ample corroboration of his debts.

Applicant’s debts are attributable in part to his inability to find meaningful full-time work between April 2010 and October 2012. One of his largest debts is a \$3,357 state tax lien (SOR debt ¶ 1.a) that he has since resolved by a combination of wage garnishment and tax refunds. He provided no evidence, though, of his paying or otherwise resolving his remaining listed debts.

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant’s lengthy period underemployment between April 2010 and October 2012. Available to Applicant in part 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.”

In Applicant’s case, however, some judgment problems persist over his accrued delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts once the underemployment conditions that contributed to the delinquencies had passed or eased, and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he has failed to address most of them in any tangible or voluntary way. Mitigation credit is not available to Applicant based on the evidence developed in this record.

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 *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

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. Failure of the applicant to make concerted efforts to pay or resolve his debts when able to do so raises security-significant concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of a state tax lien and other delinquent debts. Since his return to full-time employment in October 2012, he has not shown any manifest effort in addressing most of his covered debts to mitigate his still delinquent accounts. Even the resolution of his state tax lien did not entail voluntary payment initiatives but was the result of a combination of wage garnishment and the application of state tax refunds to the state taxes covered by the 2011 tax lien.

Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances, and Applicant to date has not made any manifest good-faith efforts to resolve his debts. Moreover, Applicant did not provide any endorsements, performance evaluations, or evidence of civic or community contributions to weigh in his favor when evaluating his overall trustworthiness and reliability. 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 accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt and his failure to provide more proof of corrective actions taken to address his old debts, it is still too soon to make safe predictive judgments about Applicant's ability to repay his listed consumer debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.b through 1.p. Subparagraph 1.a is mitigated.

### **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**

Subpara. 1.a:	For Applicant
Subparas. 1.b through 1.p:	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

