



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



In the matter of:)
)
-----) ISCR Case No. 07-06838
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

January 18, 2008

Decision

WESLEY, Roger C., Administrative Judge

Statement of Case

On September 6, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on October 9, 2007, and requested a hearing. The case was assigned to me on October 25, 2007, and was scheduled for hearing on November 29, 2007. A hearing was held on November 29, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's

case consisted of three exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) was received on December 10, 2007.

Procedural and Evidentiary Rulings

Prior to the close of the hearing, Applicant requested leave to supplement the record with documentation of his creditor contacts and efforts to repay his creditors. There being no objection from the Government, and good cause being demonstrated, Applicant was granted 14 days to supplement the record. Applicant failed to supplement the record.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: He is alleged (a) to have a judgment entered against him for \$1,666.00 and (b) to have three delinquent debts in excess of \$42,000.00. Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86), dated January 9, 2007, by denying any debts over 180 and 90 days delinquent, respectively.

For his response to the SOR, Applicant admitted the judgment entered against him and the listed three delinquent debts without explanation. He denied any deliberate falsification of his SF-86.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is married with three children. He has an Associates degree from a local community college and is assigned to missile testing by his defense employer. Between 2000 and 2004, Applicant accumulated a number of delinquent debts. Altogether, he incurred four delinquent debts that were covered in the SOR. Of these listed debts, one (creditor 1.a) resulted in an adverse judgment entered against him. Two of the debts (creditors 1.b and 1.c are relatively small in amount). By far, his largest debt is a deficiency balance following the creditor's (creditor 1.d) repossession of his mobile home in 2004 (R.T., at 19-20).

Applicant has little recall of the circumstances that prompted the apartment complex to seek and obtain a judgment against him in January 2001. He assures his wife is committed to contacting the judgment creditor to pay off the judgment (R.T., at 16-17). He assures, too, that he intends to take care of both his medical (creditor 1.b) and furniture debts (R.T., at 17-19). Afforded a post-hearing opportunity to document his repayment efforts with both of these creditors, Applicant failed to do so.

More difficult to reconcile is the deficiency balance associated with the repossession of Applicant's mobile home in 2004. Applicant purchased the home for around \$66,000.00 in 2000, or thereabouts, 2 (R.T., at 28-30). After making payments on the home for several years, his wife hurt her back in 2003 and was out of work for almost a year on disability (R.T., at 20-21). Applicant tried to obtain refinancing of the home with the mortgagee following his wife's injury, but without success (R.T., at 20-21). In 2004, the mortgagee repossessed the home. Following the creditor's repossession of the home for defaulted payments, he was notified of the impending public sale, and later the deficiency balance that remained following the sale of the home for around \$25,000.00 (R.T., at 30-31). The mortgagee never responded to Applicant's letter requests to settle the deficiency and has continued to demand the full deficiency (R.T., at 22, 31-32).

Applicant and his wife (W) now live in a temporary mobile home. W has worked at a grocery store, but has had to quit working after suffering a heart attack. Last year, Applicant was in an auto accident that caused him to miss several weeks of work (R.T., at 24).

Applicant's income and expenses remain unchanged. His monthly take home pay of around \$1,560.00 is barely enough to cover his expenses. He has a savings plan that is funded by payroll deductions (R.T., at 25-26). Applicant filed for Chapter 7 bankruptcy in the 80s and received his discharge. Since emerging from Chapter 7 bankruptcy, he has encountered difficulty keeping up with his debts with the amount of income available to him.

Asked to complete an SF-86 in January 2007, Applicant omitted his mobile home debt. When asked about his debts in a June 2007 OPM interview, he disclosed his debts, including the deficiency owed on his mobile home without any prompting from the agent (R.T., at 34-35).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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” (Adjudicative Guidelines, para. 18).

Personal Conduct

“The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” (Adjudicative Guidelines, para. 15).

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, 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 common sense 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. As with all adversary 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 any controverted fact[s] alleged in the Statement of Reasons 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 showing of material bearing, 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, consideration must take account of 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 burden of persuasion shifts to the applicant for the purpose of

establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant accumulated a number of delinquent debts between 2000 and 2004 after his wife hurt her back and had to quit working. Three of the debts are relatively small and include an unsatisfied judgment. A fourth debt covers a deficiency balance on a mobile home repossession and is significant (around \$42,000.00). To date, he has been unable to document any repayment efforts regarding any of the listed debts in the SOR. Security concerns are also raised over Applicant's omissions of his delinquent debts in the SF-86 he executed in June 2007.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the Regulation where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his failure to document his addressing of any of them, even with additional time afforded after the hearing, warrant the application of two of the disqualifying conditions (DC) of the revised Adjudicative Guidelines for financial considerations: DC 19(a) ("inability or unwillingness to satisfy debts") and DC 19(c) ("a history of not meeting financial obligations").

Applicant attributes his debt delinquencies to his wife's disability and more recent medical issues, and to his own inability to earn enough money to pay off his smaller debts and continue to carry the payments on his mobile home. To a limited extent in this case, Applicant's accrued debts do merit extenuation credit. His debts all bear some relationship to his wife's health setbacks associated with her work-related accident in 2003, and more recent heart attack. Under these recounted circumstances, 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") of the mitigating conditions (MC) of the guidelines for financial considerations has some application to Applicant's situation.

Mitigation is more difficult to establish without any documented repayment efforts with his creditors. The new Adjudicative Guidelines simply do not permit mitigation credit for unresolved debts without documented proof that the applicant has made earnest efforts to resolve his debts with the resources and counseling sources available to him.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of good judgment, reliability and trustworthiness. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance.

Based on both the guidelines and a whole person assessment of Applicant's security risk, given the present state of his finances, Applicant still leaves too many questions unanswered regarding his repayment efforts to mitigate raised security concerns. Whether his lack of documented efforts to resolve the remainder of his creditors is the result of information or resource problems is not clear, but the necessary documentation and/or probative showing of a concrete repayment efforts has not been demonstrated. Applicant's current finances remain too unsettled to enable safe predictions that he will be able to regain sufficient control of them to absolve him of continuing security risks.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and lack of probative efforts to repay them, Applicant fails to mitigate security concerns related to his longstanding debt delinquencies. Unfavorable conclusions are drawn with respect to the allegations covered by subparagraphs 1.a through 1.e.

Personal conduct issues with SF-86 omissions

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's failure to list his debts over 180 and 90 days delinquent, respectively. So much trust is imposed on persons cleared to see classified information that the margins for excusing candor lapses are necessarily narrow.

Applicant's omissions require initial application of a disqualifying condition (DC) for personal conduct of the Guidelines: 16(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities").

While it is less than clear why Applicant answered in the negative to having delinquent debts when he responded to question 28 of his January 2007 SF-86, he is credited with supplying prompt, good faith answers when subsequently interviewed by an OPM agent. MC 17(a) of the Guidelines ("the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts") is applicable. Based on his prompt, good-faith disclosure of his debt delinquencies, Applicant is able to successfully mitigate security concerns associated with his omissions.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E2.2.2 factors), favorable conclusions warrant with respect to sub-paragraph 2.a of Guideline E.

