



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03635

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel

For Applicant: *Pro se*

05/15/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated security concerns covering personal conduct, but did not mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On August 20, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) 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 (undated), and requested a hearing. The case was assigned to me on February 5, 2015, and was scheduled for hearing on March 25, 2015. At the hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on one witness (himself) and two exhibits. The transcript (Tr.) was received on April 6, 2015.

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 documentation of his satisfaction of the judgment covered by subparagraph 1.o. (Tr. 32-33)

For good cause shown, Applicant was granted five days to supplement the record. Department Counsel was afforded two days to respond. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly incurred three judgments exceeding \$3,500 and 21 delinquent debts exceeding \$21,000. Based on the SOR, none of the alleged judgments or debts have been paid or satisfied.

Under Guideline E, applicant allegedly falsified the security clearance application (e-QIP) he completed in February 2013 by omitting the adverse judgments entered against him and certain delinquent debts placed for collection. Each of these alleged omitted debts preceded the completion of his e-QIP.

In his response to the SOR, Applicant admitted most of the allegations. He denied the allegations pertaining to the judgments covered by subparagraphs 1.o-1.q, claiming that these judgments were already paid. He claimed he has monthly installment agreements in place with creditors 1.a and 1.b. He claimed that several debts are medically-related and occurred during a time when he was uninsured. He claimed that the debt covered by subparagraph 1.s represents the same debt covered by subparagraphs 1.a and 1.b. And he claimed he will address his remaining debts listed in the SOR.

Addressing his e-QIP omissions, Applicant claimed he was not aware of the creditor 1.o judgment when he completed the application, but provided the information in his ensuing interview. He claimed he did not have all of the necessary information at the time to complete the section about his remaining debts, but provided this information, too, in his ensuing interview.

Findings of Fact

Applicant is a 29-year-old pipe-fitter for 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 is unmarried and has one child. (GE 1) He claimed no post-high school educational credits or military service. (GE 1)

Applicant's finances

Between 2007 and 2010, Applicant accumulated a number of delinquent debts. Several of these listed creditors reduced their debt claims to judgments: one in July 2007 for \$764 (creditor 1.r), another in October 2007 for \$1,283 (creditor 1.p), one in May 2008 for \$2,200 (creditor 1.o), and another in August 2008 for \$139 (creditor 1.q). Two of these judgments have since been paid: creditors 1.p and 1.q. (AEs A and B) The two remaining judgments remain outstanding. (GEs 2-3; Tr. 38-40)

Besides the debts covered by judgments, Applicant accrued other delinquent debts during recurrent periods of unemployment between December 2009 and June 2010, and again between August and September 2012 following a seizure. (GE 1; Tr. 34, 41) Three of these accrued debts represent student loans: creditors 1.a-1.b and 1.s. Together, they constitute one aggregate student loan of approximately \$12,000. (GEs 2-3; Tr. 50-52) None of the remaining debts, however, have been paid or covered by documented repayment plans.

Several of the listed debts involve medical bills related to Applicant's seizure incident in 2012 when he did not have insurance coverage. (Tr. 41-43) These medical-related debts are owed to creditors 1.c, 1.e-1.g and 1.i-1.m and exceed \$2,700. (GEs 2-3) Payment documentation is lacking with respect to each of these medical debts.

Applicant's creditor 1.a-1.b and creditor 1.s student loan debts were at one time covered by monthly installment arrangements. It is not clear when Applicant last made payments on any of these loans. For none of them are documented with payment histories. (Tr. 36-37, 45-46, 50-52) Afforded the opportunity to supplement the record to provide receipts, Applicant did not do so. As a consequence, none of these debts can be credited with recent payments

At this time, it is unclear what payment arrangements Applicant is prepared to make with his individual creditors. He has no documented creditor contacts or payment arrangements with his listed creditors, except for the judgments covered by subparagraphs 1.p and 1.q, which Applicant has satisfied. While he assured he will contact the listed creditors in the SOR to arrange for individual payment plans, he provided no proof of his doing so. (Tr. 43-35, 46-48)

All of Applicant's remaining listed creditors remain unpaid and unresolved. With his limited income, no inferences can be drawn at this point as to how Applicant will choose to resolve his debts. He has not, to date, consulted with any credit counseling firm, and expressed no intention of doing so in the foreseeable future.

e-QIP omissions

Asked to complete an e-QIP in February 2013, Applicant omitted the four judgments entered against him in 2007 and 2008, (GEs 1-3) In the same e-QIP, he also omitted the delinquent debts referred for collection and covered by subparagraphs 1.a-1.b, 1.o, and 1.s-1.t. (GEs 1-3) Applicant attributed his omissions to unawareness and lack of information necessary to answer the questions. Applicant's explanations are credible and are accepted.

When asked about his delinquent debts in his first interview with an agent from a federal agency (likely, the Office of Personnel Management (OPM)), Applicant fully disclosed his debt delinquencies without any known confronting. Any evidence to challenge his claims is not available.

Endorsements

Applicant did not provide any endorsements. Nor did he furnish any evidence of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance 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 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 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 *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, attributable in part to his recurrent periods of unemployment between 2009 and 2012 and a seizure he experienced in 2012, at a time when he lacked medical insurance. Most of the listed judgment debts and other debts remain unpaid and unresolved. Security concerns are also raised over Applicant’s omission of an incurred judgment and certain delinquent debts referred to collection.

Financial concerns

Applicant’s actions reflect ongoing difficulties in managing his finances. His actions warrant the application of two of the disqualifying conditions (DC) of the AGs: 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 explicit in financial cases.

Applicant’s payment problems stem mostly from income deficits he experienced during recurrent periods of unemployment and from medical incidents that occurred when he had no medical insurance. Applicant’s mounting financial burdens have continued to affect his ability to catch up with his old debts. His past financial problems merit partial 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.”

Because Applicant has not developed any meaningful payment plans or other means for resolving his remaining debts since he returned to full-time employment in September 2012, full application of MC ¶ 20(b) is not available to him. Absent any documented evidence of repayment initiatives or efforts to otherwise resolve his remaining judgment debts and outstanding debts, Applicant may not take advantage of

MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

To date, Applicant has not provided any documented evidence of his contacting his creditors and arranging for individual payment plans. Prospects for him doing so in the foreseeable future, given his track record to date, are difficult to gauge. Currently, he lacks any established payment initiatives, credit counseling, or payment plans to assist him in addressing his debts.

Without more tangible resources and initiatives to work with, Applicant cannot demonstrate the level of financial progress required to meet 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). Applicant’s lack of any repayment actions to date with the resources available to him prevent him from meeting the Appeal Board’s requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); 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).

From a whole-person standpoint, Applicant failed to adequately document any positive steps taken within the past three years to restore his finances to stable levels commensurate with holding a security clearance. To date, Applicant has failed to demonstrate sufficient progress in addressing his listed debts consistent with meeting overall requirements for holding a security clearance. Whole-person assessment is less helpful to Applicant without any endorsements and evidence of contributions to his employer and his community to weigh.

Considering all of the circumstances surrounding Applicant’s payment history and other features of his employment and personal profile, his actions to date in addressing his finances are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a-1.o, and 1.r-1-y of Guideline F. Favorable conclusions are warranted with respect to subparagraphs 1.p-1.q.

Personal conduct concerns

In the process of completing an e-QIP in February 2013, Applicant omitted his judgments and delinquent debts that had either been charged off, assigned for collection, or which were over 120 days delinquent. Applicant’s “no” answers were based on his uncertainty at the time as to the identities of the debts and whether they had reached charge-off, collection, or 120-day delinquent status. Security concerns over Applicant’s judgment, reliability and trustworthiness are raised under Guideline E as the result of his omissions of his judgments and delinquent debts in the e-QIP he completed in February 2013. By his statements and actions, Applicant placed in issue his judgment and fiducial commitment to safeguarding classified and other sensitive materials.

Applicant's "no" answers regarding his debt delinquencies in his 2013 e-QIP were made without any demonstrated knowledge of any outstanding judgments and information that would enable him to establish the creditor identities and payment status of the listed debts in the SOR at issue (i.e., whether charged off, in collection, or over 120 delinquent within the past seven years or currently 120 days delinquent). Due diligence on his part should have prompted him to investigate the condition of his debts to ensure accurate reporting.

Certainly, Applicant's negative responses lacked any due diligence research or investigation on his part. Still, his "no" answers lack any probative proof of motive required to establish specific intent to conceal. His negative responses to the financial questions inquiring about his outstanding judgments and debt delinquencies were not accompanied by any signs or indicia of a desire to conceal debts from evaluators assessing the information provided in his e-QIP. In his unverified response to the SOR, he denied any awareness of one of the judgments and claimed he did not have the identities and information pertaining to his listed delinquent debts to fill out the section properly. At hearing, neither the Government nor Applicant provided any additional evidence about Applicant's state of mind when he completed his e-QIP.

Under the facts and circumstances of this case, Applicant's omissions were never established to be either knowing nor willful. His e-QIP responses were based on inadequate knowledge and information about the identities and status of his creditors. While yes answers with explanations of his uncertainty about the status of some potentially delinquent accounts meeting the question's criteria would have better served himself and the Government, Applicant's no answers do not reflect any knowing and willful intent to conceal.

To the extent mitigating considerations are necessary to correct any due diligence lapses associated with Applicant responses to the financial questions covered in his e-QIP, Applicant's volunteered corrections meet the prompt, good-faith requirements of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," as well as the infrequent, unique circumstances requirements of MC ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Both MC ¶ 17(a) and MC ¶ 17(c) of Guideline E apply to Applicant's situation.

In evaluating all of the circumstances surrounding Applicant's withholding of material information about his financial status in the e-QIP he completed and his corrections and clarifications in his ensuing interview (likely with an OPM agent), his explanations and timing of his corrections are sufficient to convincingly refute and mitigate the deliberate falsification allegations. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, are each core policy concerns of the personal conduct guideline (AG ¶ 15).

Considering all of the circumstances surrounding his February 2013 e-QIP omissions and ensuing accounts, Applicant's omissions of judgments and delinquent debts attributed to him are refuted as to any knowing and willful omissions. Any imputed due diligence lapses associated with his omissions are mitigated.

From a whole-person standpoint, the evidence is sufficient to demonstrate that Applicant has mounted responsible, good-faith efforts to provide accurate background information to the Government in the 2013 e-QIP he completed. In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole person. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a and 2.b.

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.o, and 1.r-1.y:	Against Applicant
Subparas. 1.p-1.q:	For Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subparas. 2.a-2-b:	For Applicant
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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

