



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03722

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

10/13/2015

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 October 30, 2014, the 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, *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 December 16, 2014, 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 August 1, 2015, and responded to the FORM with a claimed removal of all of the debts listed in the SOR from his credit reports. Applicant's posted submission is accepted as marked as Item 5. The case was assigned to me on September 10, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 18 debts (inclusive of one judgment entered in March 2011 for \$4,837) exceeding \$25,000. These debts remain outstanding.

In his response to the SOR, Applicant admitted each of the allegations. He claimed he engaged a credit repair service firm to send out letters to creditors. He claimed the credit repair firm has been successful in settling many of the accounts and will document their efforts. He attached a garnishment order secured by the creditor of a debt covered by subparagraph 1.o with a notation that this debt was satisfied. (Item 5) He provided no proof, though, that the judgment debt covered by the garnishment order was fully satisfied or how the debt arose.

In Appellant's post-appearance submission, he confirmed his posted delinquent debts were removed from his credit report. However, he provided no explanations of the circumstances of how the debts arose, or how and why they were removed.

Findings of Fact

Applicant is a 51-year-old security control order operator 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 September 2010. (Item 4) He has no children from this marriage. (Item 2) Applicant claims no college attendance within the past 10 years. He enlisted in the Marine Corps in December 1981 and received an honorable discharge in December 1987. (Item 2) Applicant has worked for his current employer since August 1995 and reported no periods of unemployment in his Electronic Questionnaire for Investigations Processing (e-QIP). (item 2)

Finances

Between 2008 and 2012, Applicant accumulated 18 delinquent accounts exceeding \$25,000. (Items 3-4) Applicant assured that all of his listed debts were either paid or removed from his credit reports. One of the debts (creditor 1.o) was reduced to judgment in March 2011 for \$4,837, and satisfied through garnishment in October 2014.

(Item 1) The remaining debts were turned over to a credit repair firm for dispute processing and removal from Applicant's credit reports. Applicant claims that the repair firm was successful in removing the listed debts from his credit reports, but provided no documentation or explanations for when and why they were removed. Without documentation and explanations, no inferences can be drawn as to whether the debts were removed from his credit reports, or if they were removed, for what reasons they were removed (i.e., due to payment or other form of resolution or because of age or unknown reasons).

Documentation of extenuating circumstances are lacking as well. Applicant has been fully employed with his security company since August 1995 and reported no prior periods of unemployment or other extenuating circumstances that could adversely affect his income and ability to pay his listed creditors and manage his finances. (Items 1 and 2)

Endorsements

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof 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 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 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

Applicant is a fully employed security control order operator who accumulated delinquent debts that he has failed to resolve. He cited no extenuating circumstances that could adversely affect his ability to address his debts.

Applicant’s accumulation of delinquent debts warrants 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 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. Some judgment problems persist over Applicant’s insufficiently resolved listed debts.

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).

Based on the documented materials in the FORM, no extenuating circumstances are associated with Applicant’s inability to pay or otherwise resolve his debts. Whether he acted responsibly in addressing his debts is directly contingent upon his providing documented evidence of how he has addressed his finances. To date, only the judgment debt covered by subparagraph 1.o has been satisfied, and this judgment was discharged through involuntary garnishment. Without documentation of financial counseling and specific voluntary steps he has taken to address his past-due debts, mitigation credit is very limited.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his insufficient efforts to resolve his listed delinquent debts. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances. In Applicant’s case, neither his debt accruals nor his

overall contributions to his employer and community reflected enough strength and improvement to overcome security concerns about the state of his finances

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 debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, it is still too soon to make safe predictive judgments about Applicant's ability to satisfactorily resolve his outstanding debts. More time is needed to facilitate Applicant's making the necessary progress with resolving his debts to warrant 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.n and 1.p through 1.r. Favorable conclusions are justified with respect to subparagraph 1.o.

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.n and subparas.	
: and subparas 1.p through 1.r:	Against Applicant
Subpara. 1.o:	For 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.

Roger C. Wesley
Administrative Judge

