



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01365

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

06/07/2016

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 financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On September 17, 2015, 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 on October 21, 2015, and requested a hearing. The case was assigned to me on January 14, 2016, and was scheduled for hearing on April 25, 2016. At the hearing, the Government's case consisted of seven exhibits (GEs 1-5). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on May 6, 2016.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented payments and payment plans. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond. Within the time permitted to supplement the record, Applicant timely provided correspondence from the U.S. Department of the Treasury dated February 8, 2013, informing Applicant of a payment reduction of \$500 from a scheduled tax refund to cover past due child support. Applicant's post-hearing submission was admitted without objection as AE A.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated two delinquent Department of Education (DOE) student loans in the respective amounts of \$5,791 and \$4,841, both of which remain outstanding. Allegedly, Applicant accrued 21 delinquent consumer and other debts exceeding \$4,600 that remain outstanding.

In his response to the SOR, Applicant admitted most of the listed debts. He denied the allegations contained in subparagraph 1.t, claiming compliance with a child support order in the county with the same name as the creditor alleged in subparagraph 1.t. Applicant claimed an intention to contact DOE about his delinquent student loans and either include the remaining debts in his final debt management plan, or make individual payment arrangements.

Findings of Fact

Applicant is a 35-year-old support technician for a defense contractor who seeks a security clearance. The admitted allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Allegations denied by Applicant are placed in issue. Findings follow.

Background

Applicant married in May 1999 and separated from his spouse in September 1999. (GE 1; Tr. 20) He has one child from this prior marriage (age 16), who resides with his mother. Applicant remained legally separated from his first wife until his divorce was finalized in May 2015. (Tr. 20-21, 31-32)

Applicant recently remarried and has two step-children from this marriage. (Tr. 20) Applicant earned a certificate of massage therapy from a technical college in February

2009. (GE 1; Tr. 21) He enlisted in the Army in November 1998 and served three months before receiving a general discharge under honorable conditions. (GE 1; Tr. 20-21)

Applicant has worked for his current employer as a support technician since August 2012. (Tr. 19) Between February 2012 and August 2012, he held a position as a security guard for a defense contractor. (GE 1; Tr. 19) Previously, he experienced periods of unemployment (between December 2011 and February 2012 and between August 2010 and January 2011). He worked for other employers between January 2011 and December 2011 (as a packer), between September 2009 and September 2010 (as a massage therapist), and between April 2010 and August 2010 (as a remodel associate), earning approximately \$9,000 a year. (GE 1; Tr. 21-22)

Applicant's Finances

In 2008, Applicant obtained two student loans to finance his college education: one for \$5,791 and another for \$4,841. (GEs 2-5) After completing his college classes, the loans were placed in forbearance for awhile. After the forbearance periods expired, Applicant, with his limited income, could no longer afford to make the required payments on the loans and defaulted in 2011. (GEs 2-5)

Besides his defaulted student loans, Applicant accumulated a number of other delinquent debts. Delinquencies were reported between 2010 and 2011 for these debts. (GEs 2-5) Most of these reported debts were medical debts that he incurred at a time when he did not have medical insurance. (Tr. 24 and 39-40) Altogether, Applicant accrued 19 delinquent medical and consumer-related debts exceeding \$4,500 (net of a duplicated debt, creditor 1.u) that to date have not for the most part been paid or otherwise resolved. Excepted is the listed debt owed to creditor 1.t, which has since paid down and returned to current status,

Based on the credit reports and Applicant's hearing statements, inferences warrant that two of the listed debts represent duplicate accounts. These two duplicate debts entail consumer accounts and are covered by subparagraphs 1.f and 1.u (\$378).(GEs 2-5; Tr. 30, 42) The remaining listed medical and consumer debts are valid debts (i.e., creditors 1.c-1.e, 1.g-1.s, and 1.v-1.w) and remain outstanding debts that have not been paid or otherwise resolved, except for the debt owed to creditor 1.t. (Tr. 26-27) Applicant attributed his debts in part to his interest in keeping enough income available to stay current with his other creditors. (Tr. 41)

Applicant made contact with a debt management firm in 2015 to consolidate his listed debts and arrange for monthly financing. (Tr. 31). Citing high monthly costs for debt management services, he has made no follow-through efforts to establish debt consolidation with the firm he has spoken to. His only furnished post-hearing documentation consisted of a letter from the Department of Treasury confirming the application of a \$500 reduction from a scheduled tax refund in 2013 to apply to owed back child support. (AE A) This reduction is covered by subparagraph 1.t, which reflects a current balance of \$450 on an account that Applicant has restored to current status. (Tr.

27-28) To date, Applicant has pursued no documented financial counseling and has mounted no probative initiatives to establish either a consolidated debt payment plan or individual payment arrangements with his creditors. (Tr. 31, 39)

Since returning to full-time employment in February 2012, Applicant has experienced no breaks in employment and no recited income shortages. He grossed \$50,000 annually while working in his previous job as a security guard. (Tr. 19) For the past four and a half years, he has worked for his current contractor, he has netted \$1,410 bi-weekly for most of the tenure of his employment. (Tr. 53) After deductions for household expenses and child support associated with his child, he has maintained a monthly remainder of about \$500. (Tr. 35) His pay was recently reduced to \$40,000 a year, which has hampered his ability to address his old debts. (Tr. 36)

Endorsements

Applicant provided no endorsements or performance evaluations. Also, he did not provide any evidence of civic or community 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."

Each of these conditions 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 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. . . . 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 Executive Order 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 that Applicant accumulated between 2010 and 2011, most of which have not been materially addressed. Afforded a post-hearing opportunity to address his remaining debts, Applicant provided clarifying documentation of an automatic allocation of \$500 of an earmarked tax refund to a child support obligation covered by subparagraph 1.t.

Of the listed debts covered in the SOR, Applicant admitted all but one of them with some clarifying explanations. Based on the reported information supplied by Applicant and the credit reporting agencies, the evidence is sufficient to 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.”

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 implicit in financial cases.

Applicant’s delinquent debts were reported in a series of credit reports issued between 2012 and 2015. (GEs 2-5) Credit reports do create presumptions of authenticity and accuracy. The Appeal Board has explained that credit reports can “normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations.” ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) Except for his disputing the listed consumer debts associated with creditors 1.f and 1.u as duplicates, and bringing his creditor 1.t account current, Applicant acknowledged all of the debts covered by the SOR to be in delinquent status at the present time.

Applicant’s accumulation of delinquent debts, inclusive of two defaulted student loan debts, along with 19 medical and consumer debts, merit only 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.” Financial hardships associated with unemployment and child support issues with his former wife are extenuating with respect to the array of delinquent debts he incurred between 2010 and 2011, but were not accompanied by enough corrective steps to justify the full application of MC ¶ 20(b). Considering his level of sustained full-time employment since 2010 and the monthly

remainder he estimated in his hearing testimony, he has the apparent resources available to him to make more payment progress to date than he has demonstrated.

None of the remaining mitigating conditions covered by Guideline F are fully available to Applicant. His financial problems are still relatively recent, and he has not developed concrete plans for addressing his remaining debts. While an acceptable payment plan need not include documented proof of satisfaction of every listed debt, it should reflect an established plan to resolve his financial problems and significant actions taken to implement that plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008)(citations and quotations omitted.) This Applicant has not demonstrated to date with his produced evidence. So, while his expressed intentions to complete a consolidated payment plan and address his individual creditors are encouraging, they do not equate to the kind of meaningful track record necessary to meet minimum Appeal Board criteria for stabilizing an applicant's finances.

Applicant's debt resolution efforts to date have been limited. Records reflect that only his listed debt with creditor 1.t (restored to current status) and creditor 1.u (successfully disputed on duplication grounds) have been successfully resolved in his favor. Further, Applicant has had only limited financial counseling.

Considering all of the circumstances in the record surrounding Applicant's debts and efforts to address them, neither MC ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;" nor MC ¶ 20 (c), "the person is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;" are applicable to Applicant's situation. Based on applicant's successful dispute of the creditor 1.u debt based on duplication, MC ¶ 20(e), "the person has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," applies.

Applicant's repayment efforts have been very limited, and are not enough to enable him to take more than partial advantage of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While Applicant's payment reduction on his creditor 1.t debt (although involuntary) is encouraging, more is needed to satisfy Appeal Board criteria for developing a meaningful track record of debt reduction and payment plans for addressing still unresolved debts. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

From a whole-person standpoint, Applicant provided no endorsement letters or performance evaluations. He documented some military service but no evidence of civic and community contributions.

Addressing his finances, Applicant has not provided sufficient evidence of debt reduction, payment track record, or plans for resolving his still outstanding debts to satisfy Appeal Board criteria for demonstrating the level of good judgment, reliability, and trustworthiness required for holding a security clearance. More payment progress is required of Applicant to demonstrate he has stabilized his finances. Unfavorable conclusions are warranted with respect to SOR allegations 1.a through 1.s and 1.v-1.w covered by Guideline F. Favorable conclusions are warranted with respect to allegations 1.t and 1.u. of the guideline.

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.s, 1.v-1.w: Against Applicant

Subparas. 1.t-1.u: 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

