



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-01601

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

05/03/2019

Remand Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On July 3, 2018, 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 (Exec. Or.) 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 Security Executive Agent, Directive 4, National Adjudicative Guidelines (SEAD 4), effective June 8, 2017.

Applicant responded to the SOR on July 25, 2018, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on October 14, 2018, interposed no objections to the materials in the FORM, and did not supplement the FORM. The case was assigned to me on February 8, 2019.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) had a tax lien entered against him in January 2012 for \$2,636; (b) is indebted to a lender on a home equity loan for \$27,083; (c) was indebted on a mortgage account that went to foreclosure in 2013; and (d) was indebted on a mortgage account that went to foreclosure in 2016. Allegedly, one of the underlying debts owed has not been resolved and remains outstanding.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed the tax lien covered by SOR ¶ 1.a is resolved. He claimed that the home equity loan covered by SOR ¶ 1.b is in the process of being resolved. He further claimed that the foreclosure listed under SOR ¶ 1.c, for which he was a co-signor on a loan made to his mother, resulted in the sale of the underlying property. And he claimed that the foreclosure covered by SOR ¶ 1.d went to foreclosure because of his loss of employment. Applicant attached a copy of the state tax lien released in July 2018, along with a copy of the charged-off home equity account covered by SOR ¶ 1.b.

On April 25, 2019, the Appeal Board remanded the decision for further processing. The decision that follows on remand corrects the cited errors in the February 27, 2019, restates the remaining findings, and confirms the conclusions reached in the February 27, 2019 decision.

Findings of Fact

Applicant is a 44-year-old mechanic 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 married his first wife in January 1998 and divorced her in February 1999. (Item 3) He remarried in February 2002 and has one child from this marriage. Applicant earned an associate's degree in August 1996.

Applicant enlisted in the Army in January 1998 and served four years of active duty. He received his honorable discharge in January 2002. (Item 3)

Since August 2016, Applicant has worked for his current employer. (Item 3) Between July 2002 and August 2016, he was employed by various employers in mechanic positions, interspersed with brief periods of unemployment. (Item 3)

Applicant's finances

Between 2012 and 2015, Applicant accumulated two delinquent debts totaling approximately \$29,719. (Items 5-6) One of the debts (SOR debt ¶ 1.a) was a state tax lien that has since been resolved. (Items 2 and 4) Another listed debt (SOR debt ¶ 1.b) was a delinquent home equity loan that was charged off In December 2015 in the approximate amount of \$27,083. (Items 5-6) This loan has not been addressed to date and remains outstanding.

Besides accruing the two referenced delinquent debts, Applicant incurred two foreclosures: one in 2013 (SOR ¶ 1.c) and another in 2016 (SOR ¶ 1.d). The first of the two foreclosures involved a mortgage on which he co-signed a note for \$86,317 in November 2002 to finance a home for his mother. (Items 5-6) This mortgage was foreclosed in 2014 following family differences between Applicant's mother and her husband. Applicant could not reconcile with his mother, and she moved out of the house, leaving the husband, who defaulted on the loan, still residing in the residence. (Items 2-6) The second foreclosure covered a rental property that Applicant financed by himself in 2011 for \$74,503 that he could no longer afford due to unemployment. (Items 2-6)

Whether either of the foreclosures ever resulted in deficiency balances is unclear. Applicant's two credit reports (Items 6-7) report zero balances. And, Applicant believes that any delinquent debts owed creditors ¶¶ 1.c-1.d were credited in the sale. (Items 5-6) While neither of the reported zero balances are dispositive without more information in the credit reports to establish payment histories and produced sales proceeds from the foreclosures, they are enough in Applicant's case to draw favorable inferences that the underlying debts were resolved by foreclosure.

To date, Applicant has failed to document any progress in addressing his delinquent SOR ¶ 1.b debt. Absent proof of payment, or payment plan, of the home equity loan covered by SOR ¶ 1.b, no favorable inferences can be drawn regarding Applicant's addressing of this debt.

Policies

The SEAD 4, App. A lists 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 conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions 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 App. A, AG ¶ 2©.

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) 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 App A, AG ¶ 2(d) 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable 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 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 accumulation of two delinquent debts (one a state tax lien for \$2,636 and another a delinquent home equity loan) totaling more than \$29,000, and his incurring of two foreclosures on loans he assumed responsibility for in 2004 and 2011, respectively. Applicant's debt delinquencies and twin foreclosures warrant the application of four of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19(c), “a history of not meeting financial obligations.”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Applicant's admitted delinquent debts and foreclosures negate the need for any independent proof. See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's admitted state tax lien, home equity loan deficiency, and two foreclosures are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Historically, the timing of addressing and resolving federal and state tax delinquencies and other debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

Applicant's cited extenuating circumstances (i.e., unemployment) provide some mitigation credit for his failure to timely address his state tax obligations and other debts when they came due. The cited circumstances he attributes to his debt delinquencies are enough to entitle him to some extenuating benefits from 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." His failure to address his SOR ¶ 1.b debt after he returned to full time employment status precludes him from taking advantage of the "acted responsibly" prong of MC ¶ 20(b)

Similarly, satisfaction of Applicant's evidentiary burden of providing probative evidence of his addressing his home equity delinquency requires more documentation of his payment efforts on his SOR ¶ 1.b home equity loan than he has provided in his submissions. While his tax lien satisfaction and pay offs of his two mortgages through foreclosure are credited to him, these debt resolutions are not enough to mitigate his financial delinquencies. More evidence of a seasoned payment history on his home equity loan is needed to make safe predictions that his finances are now stabilized and under control.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts, and implicitly where applicable the timely resolution of federal and state tax debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, his failure or inability to establish a payment history in connection with his equity loan (SOR ¶ 1.b) precludes favorable findings and conclusions with respect to raised security concerns over the state of his finances. Financial concerns associated with SOR ¶ 1.b remain.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his home equity loan to merit enough positive overall credit to mitigate financial concerns.

Overall, Applicant's actions to date in addressing his finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that his finances are not sufficiently stabilized

at this time to meet minimum eligibility requirements for holding a security clearance. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

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

Subparagraphs 1.a and 1.c-1.d:	For Applicant
Subparagraph 1.b:	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 eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

