



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-02236

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

04/08/2019

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 October 4, 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 November 30, 2018, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on January 31, 2019, and interposed no objections to the materials in the FORM. He did not supplement the FORM. The case was assigned to me on March 22, 2019.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated five delinquent consumer debts exceeding \$26,000 and (b) filed for Chapter 7 bankruptcy protection in September 2007 and received his discharged in January 2008. (Items 3 and 6) Allegedly, his accumulated delinquent debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted each of the allegations covered by SOR ¶¶ 1.a-1.d and 1.f. with explanations. He claimed he returned the vehicle covered by SOR ¶ 1.a and offered no explanations or plans related to the debts covered by SOR ¶¶ 1.b-1.d, or his bankruptcy petition and discharge in 2008. Applicant denied the allegations covered by SOR ¶ 1.e without any explanations or claims.

Findings of Fact

Applicant is a 53-year-old service technical services representative 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 in 1992, divorced in 1993, and remarried in 1995. (Items 4-5) He has ten children from this marriage. He earned an associate's degree in April 2008. (Items 4-5) Applicant enlisted in the Army in October 1984 and served two years of active duty and two years of inactive Reserve duty. (Items 4-5) He received an honorable discharge in November 1988.

Since June 2010, Applicant has worked full time for his current employer, with some overlap with his company's parent corporation, which separated from his current employer in April 2017. (Items 4-5) While employed full time by his current employer, Applicant worked contemporaneously as a part-time nutrition aide for a local nursing center. (Items 4-5)

Applicant's finances

In September 2007, Applicant petitioned for Chapter 7 bankruptcy relief. (Items 1 and 6) Prior to filing his petition, he certified to completing required financial counseling without providing a debt repayment plan. (Item 6) Applicant scheduled assets totaling \$277,371 and liabilities totaling \$369,111. (Item 6) He scheduled secured claims totaling \$266,000 and unsecured non-priority claims totaling \$102,866. (Item 6) Records confirm

that he received his bankruptcy discharge in January 2008 with no discernible assets to distribute to creditors.

Between 2012 and 2018 Applicant accumulated additional delinquent debts (five in all) exceeding \$26,000. Since returning to full-time employment in 2010, following a brief period of unemployment, he has not provided any documented proof of his addressing any of these debts. (Items 1-9) While he claimed an intent to work out payment arrangements with his creditors, he has provided no documented proof of undertaking any repayment arrangements with his creditors to date. (Items 1-9)

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(c).

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 or 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 delinquent debts after receiving a Chapter 7 discharge in 2008, in what can be characterized as a no-asset case. Since his emergence from bankruptcy in 2008, he has accumulated over \$26,000 in delinquent debts without any probative explanation aside from a brief period of unemployment in 2010. Applicant's history of financial difficulties warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19(b), "unwillingness to satisfy debts regardless of ability to do so"; and 19(c), "a history of not meeting financial obligations."

Applicant's admitted delinquent debts 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 debts 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 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 circumstances (brief unemployment in 2010) provide little extenuating benefit. 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," has minimal application to Applicant's situation. His failure to address his debt delinquencies after he returned to full-time employment status in June 2010 precludes him from taking advantage of the "acted responsibly" prong of MC ¶ 20(b).

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 delinquent debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, his failures or inability to establish documented payment initiatives with his listed SOR creditors, both before and after the initiation of the security clearance process, preclude favorable findings and conclusions with respect to raised security concerns over the state of his finances.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his delinquent debts to merit enough positive 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-1.f: 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

