



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



In the matter of:)
)
)
 -----) ISCR Case No. 19-00459
)
)
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
 For Applicant: *Pro se*

 12/16/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, 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 March 20, 2019, 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 April 4, 2019, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 28, 2019, and interposed no objections to the materials in the FORM. He timely supplemented the record with written explanations of his debts and prior Chapter 7 bankruptcy, but attached no documented submissions addressing his debts and progress in resolving them. Applicant's post-FORM submission was admitted without objection as Item 9. The case was assigned to me on November 22, 2019.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated eight delinquent debts exceeding \$48,000 and (b) petitioned for Chapter 7 bankruptcy in July 2010 and was discharged of debts exceeding \$57,284 in October 2010. Allegedly, his listed delinquent student loan and consumer debts remain unresolved and outstanding.

Under Guideline E, Applicant allegedly falsified his Electronic Questionnaires for Investigations Processing (e-QIP) of September 22, 2016 by omitting his delinquent debts and petition for Chapter 7 bankruptcy relief. Allegedly, these omissions covered material facts.

In his response to the SOR, Applicant admitted most of the allegations with explanations, denying only the debts covered by SOR ¶¶ 1.g-1.h. He claimed he could not identify three of the listed debts in the SOR (SOR ¶¶ 1.b and 1.d-1.e), and would work towards paying off the debts he admitted. (Item 1)

Addressing the falsification allegations covered by Guideline E, Applicant admitted his omissions with explanations. He claimed he did not know his listed delinquent debts were over 120 days delinquent. And, he claimed he did not believe his listing of his July 2010 Chapter 7 bankruptcy petition was required, since it had been over six years since he filed his petition and "had finalized." (Item 1)

Findings of Fact

Applicant is a 55-year old AF security officer 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 September 1988 and divorced in June 1992. (Item 2) He remarried in September 1998 and divorced in April 2007. He has no children from either of his two marriages. Applicant has co-habited with another person since July 2012. (Item

2) Applicant earned a high school diploma in June 1983. (Item 2) He attended an art institute for three months in 2010 (September 2010-December 2010) but earned no degree or diploma. (Item 2). Applicant did not report any military service. Since September 2016, Applicant has worked for his current employer. (Item 2) Previously, he worked for other employers as a security officer. (Item 2) He reported being granted a security clearance in June 1983, (Item 2)

Applicant's finances

Between 2009 and 2018, Applicant accumulated a number of delinquent debts (mostly student loans). His listed debts in the SOR are comprised of the following: SOR ¶¶ 1.a (a consumer debt for \$456); 1.b (a consumer debt for \$158); 1.c (a student loan debt for \$10,064); 1.d (a student loan debt for \$637 on a \$12,841 balance); 1.e (a student loan debt of \$382 on a \$7,820 balance); 1.f (a consumer debt for \$28,015); 1.g (a consumer debt for \$4,620); and 1.h (a consumer debt for \$4,601). (Items 5-8) Three of these debts (SOR debts 1.f-1.h) are covered by garnishment orders that have not been completed.

To date, these debts continue to appear on Applicant's credit reports as unpaid and unresolved. (Items 6-8) Applicant acknowledged these unpaid debts in his answers to interrogatories propounded to him in 2019. (Item 4) In a personal financial statement submitted in January 2019, he listed monthly net income of \$5,491, monthly expenses of \$2,556, and monthly debt payments of \$385. (Item 4) He listed a monthly remainder deficit of \$6. (Item 4)

In August 2018, Applicant was interviewed by an investigator of the Office of Personnel Management (OPM). In this personal subject interview (PSI), Applicant acknowledged four of the listed delinquent debts and pledged to sit down with his wife who pays the bills and develop payment plans for the debts he can identify as his debts. (Item 3)

Additionally, Applicant accumulated delinquent debts prior to July 2010 totaling more than \$57,284 that he successfully discharged in bankruptcy in October 2010 in connection with a petition he filed in July 2010. (Items 6-9) None of the listed SOR debts scheduled in his bankruptcy petition were discharged by his bankruptcy petition and continue to be debts that are unresolved and still outstanding.

Applicant attributed his debt delinquencies to budgeting problems he encountered following his separation and divorce from his second wife in 2007. (Item 9) He claims that two of the listed debts cover the same private school account and represent duplicates. (Item 9) His credit reports list two separate student loan identification numbers and different dates of origination for the two student loan debts covered by SOR ¶¶ 1.-1-d. Applicant's disputed student loan debts cannot be reconciled as duplicates without more evidence from Applicant. (Items 6-8) Applicant did not provide any evidence of current budgeting and counseling. Nor did he provide any evidence of concrete payment plans to address his unresolved debts.

E-QIP omissions

Asked to complete and e-QIP in September 2016, Applicant omitted all of his delinquent accounts when responding to questions about his finances in Section 26 of his e-QIP. (Item 2) Additionally, he omitted his filing of a Chapter 7 bankruptcy petition in Jul2010(discharge in October 2010). (Item 2) He attributed his delinquent debt omissions to his mistaken understanding that the listed debts were over 120 days delinquent. (Item 1)

Applicant attributed his Chapter 7 bankruptcy omission to his claimed belief in 2016 that because his bankruptcy petition was filed and finalized over six years ago it did not need to be listed on his 2016 e-QIP. (Item 1) Applicant's explanations for his e-QIP omissions are not sufficiently developed to credit him with mistaken understandings of what was required to be listed in e-QIP. Candor lapses are inferred with regards to Applicant's e-QIP omissions.

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.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . . AG ¶ 15.

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. Factual inferences cannot be drawn 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

Additional security concerns are raised over Applicant's omissions of his listed delinquent debts and chapter 7 bankruptcy petition in the e-QIP he completed in September 2016.

Financial concerns

Applicant's history of financial difficulties warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations.” See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's admitted debts is fully documented and creates 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 failures and debt delinquencies.

Historically, the timing of addressing 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).

While it has been many years since Applicant completed his divorce from his second wife in 2007 and his ensuing bankruptcy discharge in 2010, some credit for extenuating circumstances associated with adjustments he needed to make with managing his finances is warranted. 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances,” is partially applicable to Applicant’s circumstances. Because Applicant has not shown any concerted efforts to pay or otherwise resolve his listed delinquent accounts with the resources available to him since his emergence from his Chapter 7 bankruptcy in 2010, the second prong of MC 20(d), “acted responsibly under the circumstances,” is not available to him.

Without more demonstrated progress in addressing his listed SOR debts, none of the other mitigating conditions potentially available to Applicant under Guideline F apply to Applicant’s situation. In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of debt reduction through the 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, he has failed to document any progress in addressing the delinquent debts he has accumulated since emerging from his Chapter 7 bankruptcy discharge in October 2010. Despite promises made to the OPM investigator in 2018 that he would check with his wife and explore payment plans with the creditors holding valid debts, he has produced no proofs of making any concerted efforts to explore payment plans

Based on a thorough consideration of all of the evidence presented, Applicant failed to mitigate security concerns associated with his accumulated debts that remain unresolved and outstanding. Before he can be credited with progress in stabilizing his finances, he must be able to show more substantive progress in paying off or otherwise resolving his debts.

Personal conduct concerns

Potentially serious and difficult to reconcile with the trust and reliability requirement for holding a security clearance are the security concerns raised by Applicant’s inferred deliberate and knowing omissions of his delinquent debts and Chapter 7 bankruptcy petition, all incurred within the previous seven years preceding his completion of his e-QIP in September 2016. So much trust is imposed on those cleared to see classified and sensitive information that accommodations for breaches are necessarily calibrated narrowly. *See Snapp v. United States*, 444 U.S. 506, 511 n.6 (1980). Material breaches of an applicant’s disclosure responsibilities in a security clearance application are, in turn, incompatible with the high trust principles affirmed in *Snapp*.

Applicant’s omitted information covered important background information and, as such was material to any assessment of Applicant’s eligibility to hold a security

clearance. His omissions invite application of one of the disqualifying conditions (DCs) of the personal conduct guideline: DC ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.”

Applicant did not acknowledge his delinquent debts and Chapter 7 bankruptcy petition and discharge until he was confronted with the information. His disclosures that were made only after being confronted with the information do not 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,” of Guideline E.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. While promising the OPM investigator who interviewed him in 2018 that he would look into debts identified in his credit reports as seriously delinquent, he failed to follow up with inquiries with his listed creditors and take remedial steps to address his debts. And, when asked to disclose his delinquent debts and Chapter 7 bankruptcy petition, he failed to do so until confronted two years later in an OPM interview.

Taking into account Applicant’s lack of progress in addressing his listed delinquent debts listed in the SOR and his ensuing omissions of his delinquent debts in his completed e-QIP, mitigation credit is not supported by the evidence presented. Conclusions are warranted that Applicant’s finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Neither his accumulated delinquent debts and Chapter 7 bankruptcy petition nor e-QIP omissions are mitigated. 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.h Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.b: Against Applicant

Conclusion

In light of the circumstances presented, 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