



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 19-01077

Appearances

For Government: Michelle Tilford., Department Counsel

For Applicant: *Pro se*

08/23/2019

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 April 12, 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 May 19, 2019, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on June 26, 2019, and interposed no objections to the materials in the FORM. He timely supplemented the record with a written explanation of his debts with an attached printout of payments made and payments to be made through his debt relief firm. Applicant's post-FORM submissions were admitted without objection as Items 11-13. The case was assigned to me on August 8, 2019.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file his state income taxes for tax years 2010 through 2016 and (b) accumulated seven delinquent debts exceeding \$48,000. (Item 1) Allegedly, his accrued delinquent state tax filing lapses and delinquent debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted the allegations with explanations. He claimed he experienced financial hardships: losing his job, house, and fiancé, facing unemployment for six months, and having to help his son who was diagnosed with cancer. Applicant expressed shame for the neglect he exhibited in handling his SOR ¶ 1.a debt. He claimed his morals, values, ethics, and integrity remain unbroken. And, he claimed he is now financially stable and is working to resolve the SOR ¶ 1.a debt

Findings of Fact

Applicant is a 67-year-old technical staff employee 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 April 1982 and has two grown children from this marriage. (Item 3) He earned a bachelor's degree in engineering from an accredited college in June 1987. (Item 7) He reported no military service.

Since January 2018, Applicant has worked for his current defense contractor. (Item 3) Between March 1992 and May 2017, he worked for other employers as a software engineer. He reported periods of unemployment between May 2015 and April 2016, and between May 2017 and January 2018. (Item 3)

Applicant's finances

Applicant failed to file his state income tax returns for tax years 2010-2016. (Items 7-10) He attributed his filing failures to misunderstandings over whether he needed to file the returns in issue when he had regularly received refunds for the prior years. (Item 7) He figured that it was not worth his time to pursue the refunds that were relatively small. He settled on letting the state have the extra money, and foregoing filing tax returns. (Item

7) Applicant provided no legitimate reasons for his failing to file his state tax returns for the 2010-2016 years in question. To date, he has made no documented efforts to file his back tax returns for these tax years.

During periods of unemployment and struggles with his finances, Applicant defaulted on a number of his consumer accounts. His credit reports reveal that he accumulated delinquent accounts exceeding \$48,000 between 2014 and 2017. (Items 4-5) Reported delinquent debts are comprised of the following: ¶¶ 1.b (16,419); 1.c (\$9,600); 1d (\$6,331); 1.e (\$5,819); 1.f (\$3,036); 1.g (\$1,021); and 1.h (\$6,511). (Items 4-7)

Records confirm that Applicant took no actions to address his delinquent debts until November 2019. (Item 2) At this time, he completed a debt negotiation agreement with a debt relief firm and included all of his listed delinquent debts. (Item 2) Payment terms of the agreement called for monthly payments of \$680. (Item 2) He has made seven monthly payments to date and appears to be up-to-date on his payments to his debt relief firm. (Item 2)

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 chances; (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 (a) Applicant’s failure to file state tax returns for tax years 2010-2016, as required by state law and (b) accumulation of over \$53,000 of delinquent debts that he had previously failed to address. 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©, “a history of not meeting financial obligations”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax as required,” apply to the facts of Applicant’s case.

Applicant’s admitted tax-filing lapses and delinquent debt 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 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 and resolving tax filing issues and 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 (assumed tax refunds and recurrent periods of unemployment) provide some 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 some application to Applicant’s debt situation.

Because Applicant’s efforts to address his delinquent debts have only been recently initiated with modest repayment efforts to date, only partial extenuating credit can be accorded his most recent repayment efforts. And, MC ¶ 20(b) is not available at all to extenuate Applicant’s collective failures to file his state tax returns for tax years

2010-2016. Assumed refunds and unemployment issues are not justification for his failure to file his state tax returns as required by his state's tax laws.

To his credit, Applicant has made some manifest progress in addressing his delinquent debts through the debt relief program he has enrolled in. While modest to date, he has made the monthly payments he committed to with his debt relief negotiator. His efforts entitle him to partial application of MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay his creditors or otherwise resolve his debts." Counseling benefits from his debt relief program are unclear and appear to be too minimal in scope to warrant any application of MC ¶ 20(c).

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of tax filing and 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, he has failed to date to initiate any efforts to address his state taxes and has taken only recent steps to address his accrued debts with a modest repayment plan that is still to early in follow-through to create the basis for implying a solid track record in Applicant's favor. His limited efforts to date, when considered together, are insufficient to enable him to achieve 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 state taxes and delinquent debts to merit enough positive credit to mitigate financial concerns. Overall, Applicant's actions to date in addressing his state taxes and delinquent debts reflect insufficient 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 insufficiently 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

Subparagraph 1.a-1.h:

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

