



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 13-01365

Appearances

For Government: Candace Le'i Garcia, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

10/08/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

History of the Case

On February 20, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting 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 the DOD on September 1, 2006.

Applicant responded to the SOR on April 10, 2014, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on August 18, 2014, and provided additional materials within

the time permitted, consisting of updated credit reports and other explanatory materials. Applicant's post appearance submission was admitted. (Item 8) The case was assigned to me on October 2, 2014.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts. (Item 1) Together, they exceed \$17,000.

In his response to the SOR (Item 2), Applicant admitted the allegations covered by the SOR with explanations. He claimed that he and his family fell behind on their debts soon after he received a credit card from the creditor identified in subparagraph 1.a. He claimed both his mother and father-in-law experienced medical issues that rendered them unable to work. Only 20 years old at the time, Applicant claimed great difficulty in supporting his entire family with his limited income. (Item 2) He claimed he disputes the debt covered by subparagraph 1.a and has either paid (creditor 1.e) or set payment plans with the creditors covered by subparagraphs 1.b-1.d. (AEs 2 and 7)

Findings of Fact

Applicant is a 28-year-old mechanic/technician of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant is single and has no children. (Item 3) He earned a high school diploma and credits from a technical college. (Item 3) He claims no military service.

Applicant's finances

Between 2006 and 2011, Applicant accumulated a number of delinquent debts. He attributed his delinquent debts to a period in 2007 when he was serving as his family's sole-provider following his mother's car accident and his step-father's second heart attack. Their medical conditions prevented them from working. (Items 2 and 4) Besides caring for his parents, Applicant provided financial support for his two younger brothers while his parents were disabled. (Items 2 and 4) Medical expenses incurred from an accident Applicant experienced in 2009 accounted for three of the listed debts.

Applicant's delinquent accounts are covered in subparagraphs 1.a through 1.e as follows: 1.a (\$15,988); 1.b (\$324); 1.c (\$297); 1.d (\$291); and 1.e (\$132). (Items 1-4) Credit reports show that each of these accounts have since been addressed by Applicant. (Items 5 and 6) One of the accounts (an aged debt covered by subparagraph 1.a) involved an old bank account last addressed in 2006 that has since fallen off Applicant's most recent credit reports. (Items 5 and 6) The debt represents a credit card account that Applicant opened with creditor 1.a in 2006 while his mother and step-father still had paying jobs. Applicant disputes this creditor 1.a debt on the grounds it no

longer appears on his credit reports and is not enforceable. (Items 2, 6, and 7) The underlying creditor (creditor 1.a) agrees with Applicant and documented its removal of its reporting the debt to consumer reporting agencies. (Item 2) While Applicant believes he may have a moral obligation to repay the debt, he expressed certainty that he has no legal obligation to do so. (Items 2 and 6-8) Promises made by Applicant to an agent of the Office of Personnel Management (OPM) in October 2013 who asked about the creditor 1.a debt committed him to checking and verifying the debt, but not to addressing it. (Item 6) Based on his further research and review of his credit reports, he concluded that the creditor 1.a debt has not been addressed since 2006, did not require listing in his e-QIP, and is likely barred by his state's statute of limitations. (Item 8) Applicant's assumptions and conclusions are credible ones and are accepted.

Applicant's three listed medical debts are covered by a repayment plan with the creditor identified in subparagraphs 1.b-1.d. Under Applicant's consolidated repayment plan with this creditor, all three of the debts (creditors 1.b-1.d) are aggregated for a total of \$1,057 and were due in May 2014. (Item 2) Applicant documented his making monthly payments to the creditor between March and July 2014 totaling \$500. (Item 8) These payments reduced the balance due to this creditor to just \$675. (Item 8) Also, Applicant documented his repayment in full of his creditor 1.e debt (Item 2) and the three small debts (i.e., to creditors holding \$99, \$31, and \$45 credit balances, respectively) listed in his October 2013 credit report. (Items 5 and 8)

While Applicant has received no formal financial counseling, he has since enrolled in a credit repair group that provides both counseling and credit repair services. (Item 8) At this point, it is not clear what credit repair or counseling benefits Applicant has received from this group.

Endorsements

While Applicant did not furnish any positive endorsements from his command, he received a strong character reference from his sister. (Item 8) She credited him with paying his bills responsibly, leasing her truck with timely payments, and helping her daughter with her school loan. (Item 8)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA 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." 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 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.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. (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.

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 over a considerable number of years that he failed to address with the resources available to him. Applicant's recurrent problems with managing his finances over an extended number of years (at least since 2009) reflect lapses of judgment in administering his financial responsibilities. Applicant's actions 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.”

While caring for his parents and younger siblings as their sole provider for a stretch in 2007 while his parents were disabled and unable to work, Applicant incurred several debts that he could not pay at the time with his limited income sources. Since 2009 at the very least, Applicant has enjoyed steady gainful employment without any visible breaks in work status. He has since addressed all of his listed debts. One debt (creditor 1.e) he satisfied in full, and three debts (creditors 1.b-1.d) he has addressed through a repayment plan with the creditor holding all three accounts. The remaining debt (creditor 1.a) Applicant disputes, and this debt is an aged consumer debt that has since fallen off his credit reports and is barred by his state's six-year statute of limitations.

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 explicit in cases involving debt delinquencies.

Some extenuating circumstances are associated with Applicant's loss of his parents' earning sources while they were temporarily disabled and unable to work. However, he has been gainfully employed and apparently able to address his old debts since at least 2009. Because he had not accessed his credit reports before his October 2013 interview with an OPM agent, he was not familiar with the delinquent debts covered by the SOR and could not address them earlier. Based on the evidence and circumstances presented, Applicant is entitled to take advantage of several of the mitigating conditions under the financial guideline with respect to the allegations covered by subparagraphs 1.a-1.e. Both MC ¶ 20(a), "the behavior happened a long time 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," and MC ¶ 20(b), "the conditions that resulted in the behavior 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," apply to Applicant's situation.

Based on this record, Applicant's creditor 1.a debt is barred from collection by the six-year statute of limitation in effect in Applicant's state. See §09.10.053 of State X Rev. Stats. (Item 8) Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Still, they provide effective collection barriers and, like bankruptcy, serve to insulate the debtor from pressures to raise cash to satisfy his or her creditors.

Records do not reveal what financial counseling services Applicant has received to date. Although, he has engaged a credit repair group that also provides financial counseling, it is not clear what counseling benefits (if any) he has received since enrolling in the group's program. Based on the facts and circumstances presented, MC ¶ 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," has only partial application to Applicant's situation. However, Applicant has successfully disputed the creditor 1.a debt, which has since fallen off his credit report and is barred by his state's statute of limitations. MC ¶ 20(e), "the individual 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," fully applies.

Applicant's finances have been marked by some past periods of instability (i.e., 2007 and part of 2009), but have been stabilized for the most part since at least 2009. He has since addressed four of his debts with a documented payment and payment plans that cover his three medical debts. And he has successfully disputed the only remaining debt (creditor 1.a) that he has not addressed.

While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). Applicant has done this, and his efforts to date reflect considerable headway with his listed debts.

From a whole-person standpoint, the evidence reveals some lapses of judgment associated with Applicant's accumulation of delinquent debts and delays in addressing them while fully employed. His mitigation efforts over the past year reveal a promising track record, enough to demonstrate the stabilization of his finances. Overall, Applicant's efforts to date are sufficient to meet mitigation requirements imposed by the AGs governing his finances.

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): FOR APPLICANT

Subparagraphs. 1.a-1.e: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

