



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02768

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, 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 July 28, 2014, 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 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 DoD on September 1, 2006.

Applicant responded to the SOR on August 12, 2014, and requested a hearing. The case was assigned to me on February 15, 2015, and was scheduled for hearing on March 25, 2015. At hearing, the Government's case consisted of two exhibits (GEs 1-2). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on April 7, 2015.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with his documented unemployment record. For good cause shown, Applicant was granted five days to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant provided documentation of his state unemployment statements covering his years of unemployment between November 2005 and March 2015. His submission was admitted as AE A.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred three adverse judgments exceeding \$27,000; (b) petitioned for Chapter 7 bankruptcy relief in May 2005; and (c) accumulated four delinquent post-bankruptcy debts exceeding \$2,000. Allegedly, each of the alleged debts remains delinquent.

In his response to the SOR, Applicant admitted each of the allegations. He claimed he was laid off on multiple occasions, beginning in 1986. He claimed layoffs in 1991, 2005, and 2008. He claimed the judgments covered in subparagraphs 1.a and 1.c are related to the same voluntary repossession of the vehicle he purchased in 2006 for use in his mortgage closing business. And he claimed he is a law abiding citizen who takes pride in his work for his defense contractor employer.

Findings of Fact

Applicant is a 53-year-old word processor 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 spouse in June 1969 and has no children from this marriage. (GE 1) He claimed no post-high school educational credits or military service.

Applicant's finances

Between 1991 and October 2013, Applicant was laid off on multiple occasions. His reported employment history reflects layoffs between November 2005 and November 2006, between November 2006 and November 2007, between September 2008 and December 2008, between April 2009 and June 2009, and between June 2010 and

October 2013. (GE 1 and AE A) After returning to full-time employment in 2013, he worked for eight months before he was again laid off in 2014. (Tr. 25, 30)

Applicant's state unemployment records reflect his collection of state unemployment benefits during his layoffs. (AE A) Applicant's unemployment benefit statements reveal that he collected approximately \$41,640 in unemployment benefits between 2005 and 2015. (AE A)

Throughout his recurrent periods of unemployment, Applicant accrued debts that he could not pay for or otherwise resolve. Unable to pay or otherwise resolve his debts with his recurrent layoffs, Applicant petitioned for Chapter 7 bankruptcy relief in May 2005. (GEs 1 and 2; Tr. 27-28) He was granted a discharge in August 2005. Since his bankruptcy discharge, he accumulated additional delinquent debts that he has not been able to address with payoffs or payment plans. (GEs 1 and 2) Applicant's credit report (GE 2) does not reflect any payment progress on any of these debts since they became delinquent.

Two of Applicant's post-bankruptcy creditors reduced their carried delinquent balances with Applicant to judgments: (a) Creditor 1.a obtained a judgment in February 2013 for the liquidated sum of \$17,989 on a defaulted vehicle loan; (b) creditor 1.b in July 2010 for \$7,756. (GE 2) A third judgment was reportedly filed by creditor 1.c in May 2007 for \$1,575. (GE 2) This third judgment covers a purchase money loan Applicant obtained to meet the lender's requirements for his 2006 vehicle purchase from creditor 1.a's predecessor. (GE 2; Tr. 31)

Applicant's credit report revealed an additional debt that was not included in the SOR. This debt reflects a charged-off automobile purchase that was last reported delinquent in January 2014 and charged off. (GE 2) Explanations of the charge-off status of this debt are not available.

To date, Applicant has not addressed any of his outstanding debt delinquencies. Nor has he provided any documentation of counseling, budgeting, or current financial status. After briefly considering petitioning for bankruptcy, he decided against pursuing this option out of concern for his clearance. (Tr. 28)

Applicant assured that he still wants to pay his outstanding individual creditors. (Tr. 27-28). Without work, though, he does not have the resources to address them. (Tr. 29-33) Currently, each of the debts listed in the SOR remains in delinquent status and either unpaid or unresolved.

Endorsements

Applicant did not provide any endorsements. Nor did he furnish any evidence of civic or charitable contributions.

Policies

The AGs list 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 "[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. The following AG ¶ 2(a) 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 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. 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 history of delinquent debts, attributable in part to his diminished earnings during recurrent periods of unemployment. Applicant's actions warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶ 19(c) "a history of not meeting financial obligations."

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 also explicit in financial cases.

Applicant's payment problems were mostly attributable to recurrent periods of unemployment between December 2006 and October 2013. His financial struggles during this span of recurrent unemployment continue to affect his ability to catch up with his old debts. Applicant's past financial problems merit partial application of 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." Because Applicant has not been able to develop any track record of repayment since his return to full-time employment, full application of MC ¶ 20(b) is not available to him. Absent any evidence of repayment initiatives or efforts to otherwise resolve his debts, Applicant may not take advantage of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," either.

Applicant's lack of any established payment initiatives, counseling, or payment plans during periods of full-time employment preclude him from demonstrating the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's lack of any repayment actions to date with the resources available to him from employment and unemployment benefits prevent him from meeting the Appeal Board's requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant failed to document any positive steps taken within the past year to restore his finances to stable levels consistent with minimum requirements for holding a security clearance. For lack of any documented payment initiatives, endorsements, or evidence of civic and charitable contributions to assess Applicant's overall trust and reliability, whole-person assessments are difficult to form. Considering all of the circumstances surrounding Applicant's payment history and other features of his employment and personal profile, his actions to date in addressing his finances are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by Guideline F.

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

Subparas. 1.a-1.h:

Against Applicant

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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 security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

