



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03067

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

03/06/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On October 2, 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 October 10, 2014, and requested a hearing. The case was assigned to me on October 29, 2014, and was scheduled for hearing on February 25, 2015. At hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on one witness (himself) and six exhibits (AEs A-F). The transcript (Tr.) was received on March 9, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated one delinquent debt for \$17,713. In his response to the SOR, Applicant admitted the allegation pertaining to the debt covered by subparagraph 1.a. He claimed this medical debt arose out of a car accident in which he was struck by a vehicle while rushing to protect his four-year-old son. Applicant accepted full responsibility for the debt and claimed he had begun to make payments to discharge the debt. He claimed he is a very trustworthy person who takes his assigned job duties very seriously.

Findings of Fact

Applicant is a 53-year-old office manager specialist 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 2009 and has three children from this marriage: two stepsons from his wife's previous marriage (ages 8 and 7) and one son (age 4). (GE1; Tr. 39) He earned two years of college credits from a local community college and claimed no military service. (GE 1; Tr. 53-55)

Applicant's finances

In August 2011, Applicant was involved in a major accident while racing to a crosswalk to rescue his young son from approaching vehicles who had entered the crosswalk zone. (AEs D and E; Tr. 31) Following the accident, Applicant and his son were transported to a local hospital for evaluation and treatment. (AE E; Tr. 31)

For the two days that Applicant and his son were hospitalized, Applicant was billed a total of \$17,713. (AE F) Fully insured at the time of the accident, he expected his medical expenses to be covered by his insurance policy. (Tr. 44-45)

Shortly after Applicant was discharged from the local hospital that treated him, he relocated and never received a bill from the hospital. (Tr. 32-35, 40) He only learned of the amount owing from the interviewing agent of the Office of Personnel Management (OPM), some two years after the bill's issuance. (Tr. 31, 45) Once he learned of the still outstanding debt, he tried to obtain additional funds from his insurer. (Tr. 32-33) He was told that because the medical year was completed for the 2011 billing period, they could

provide him only enough funding to cover a small portion of the balance owing. (Tr. 33, 48-49)

In July 2013, Applicant arranged a debt repayment plan with the collection agent for creditor 1.a. (AE B) He made three payments between July and September 2013: \$713 in July 2013, \$500 in August 2013, and \$212 in September 2013. (AE B) After making these three payments, he ceased making payments until October 2014, citing additional financial burdens. (AE B)

Since resuming his plan payments in October 2014, Applicant has made three additional payments totaling \$500. (AE B); Tr. 36-39) Under the terms of his reinstatement plan, the collection agent for the medical provider takes \$100 a month out of his pay account. (Tr. 36, 50-51) Altogether, Applicant has made six payments approximating \$1,900.

Applicant nets \$2,500 every two weeks and is aided by his wife's bi-weekly net monthly income of \$1,100. (Tr. 56-58) After allowances for monthly household expenses, and day care, he has no remainder. (Tr. 60) He expects to continue with his current repayment arrangement until his creditor 1.a debt is satisfied.

Endorsements

Applicant's direct supervisor who testified expressed familiarity with the circumstances surrounding applicant's auto accident and the medical bill that rose out of the medical services provided applicant for his accident-related injuries. (Tr. 66-67) He characterized Applicant as reliable and trustworthy. (Tr. 68)

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.

The AGs 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." They 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 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 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 accumulated delinquent debt of \$17,713 associated with medical services received in connection with a 2011 auto accident. Medical expenses incurred that were not paid by his medical insurer as expected were considerable and were not addressed by Applicant affirmatively until he learned of the outstanding debt from the OPM agent who interviewed him in 2013. Applicant’s actions warrant the application of two of the disqualifying conditions (DC) of the Guideline: DC ¶ 19a), “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. See AG ¶ 18.

Applicant’s failure to timely discharge the medical debt covered by subparagraph 1.a resulted from his lack of timely notice from the original creditor, who likely mailed its bill to Applicant’s old address. Once he learned of the outstanding debt from the OPM agent who interviewed him in 2013, he contacted the collection agent for the creditor and entered into a repayment plan.

Since entering into a repayment arrangement with creditor 1.a in 2013, Applicant has since made steady progress (with only one break in payments) in repaying the debt with the financial resources available to him and has paid down almost \$2,000 of the original debt. Applicant’s accrual of a significant medical debt is aberrational and has since been corrected with his payment arrangements that include some minor financial assistance from his insurance carrier. His injuries that required medical treatment

resulted from his coming to the aid of his young son at risk of being struck by an oncoming vehicle. The circumstances that contributed to the medical debt at issue merits the 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.”

Applicant’s repayment record with the collection agent for Applicant’s medical creditor is encouraging and warrants the application of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant is considered to be reliable and trustworthy by his supervisor and can be expected to continue his monthly payments until the debt is discharged.

Applicant’s documented debt payments reflect satisfactory progress in accordance with 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). His repayment actions to date enable him to meet the Appeal’s Board requirements for stabilizing his finances. 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 documents a meritorious record of civilian employment with his defense contractor employer and has impressive support from his supervisor. Addressing his finances, he has developed a promising solid track record of debt management with the only identified delinquent debt and is committed to maintaining his finances at respectable levels consistent with holding a security clearance.

Applicant’s documented payment initiatives concerning the medical debt covered by subparagraph 1.a are encouraging and reflect a serious commitment on his part to satisfy the only delinquent debt attributed to him based on the data pulled from his credit reports. Overall, Applicant’s corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegation 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): FOR APPLICANT

Subpara. 1.a:

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

