



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00469

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

09/10/2014

Decision

WESLEY, Roger C., Administrative Judge:

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

Statement of Case

On March 20, 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 April 28, 2014 and requested a hearing. The case was assigned to me on June 18, 2014, and was scheduled for hearing on July 28, 2014. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and six exhibits (AEs A-F). The transcript (Tr.) was received on August 6, 2014.

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 an updated credit report and account history of his creditors. For good cause shown, Applicant was granted 10 days to supplement the record. The Government was afforded two days to respond.

Within the time requested, Applicant provided a personal statement, documented his monthly payments on his debt settlement plan, furnished a garnishment and earnings withholding order of February 2014, and provided an endorsement from his site manager. Applicant's submissions were admitted as AEs G- J.

Summary of Pleadings

Under Guideline F, Applicant allegedly incurred one judgment against him in November 2011 in the amount of \$4,048 and accumulated 11 delinquent debts exceeding \$35,000. His listed debts covered consumer, utility, and medical accounts, and a rental lease.

In his response to the SOR, Applicant admitted most of the debts but denied the allegations contained in subparagraph 1.c (claiming it is a duplication of subparagraph 1.b) and 1.j (claiming it has been paid off). He claimed he will be paying off three of the remaining creditors (i.e., those medical debts covered by subparagraphs 1.g-1.i and 1.k). He provided historical details of his prior layoffs and struggles to find work in a depressed economy. He claimed he paid some of the debts and prioritized for payment the loans he received from friends over the debts he owed to his other creditors.

Applicant claimed he was laid off in March 2009 and could not find full time employment until September 2012. During this time, he claimed he had to choose between paying his bills and eating and spent most of his money paying back friends and helping his daughter once he obtained full time work. He claimed he has since obtained the services of a debt settlement law firm to help him settle his debt. And between jobs in 2013, he claimed he traveled to Australia for some three months to assist a drug rehabilitation facility.

Findings of Fact

Applicant is a 42-year-old information technology (IT) manager of a defense contractor who seeks a security clearance. (GE 1; Tr. 47) 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 February 1981 and divorced his wife in August 1986. (GE 1) He has one child (a daughter) from this marriage and has not remarried. (GE 1; Tr. 80) Applicant earned an associate of arts degree in electronic engineering. (Tr. 81-82) He earned numerous certificates for his technical training (Tr. 81) and most recently (in July 2012) was awarded a certificate of completion in network security training. (GE 1 and AE E) He enlisted in the Air Force in September 1970 and served three years of active duty. (GE 1; Tr. 82-83) Applicant was honorably discharged in July 1973. (GE 1)

Applicant's finances

Between March 2009 and June 2013, Applicant experienced recurrent periods of unemployment following disputes with his supervisors, and survived economically with part-time jobs. Records show that in March 2009, he was fired from his position as a technical project manager over a disputed incident at work. (GEs 1 and 2)

Following three-plus years of independent consulting and part-time work in a struggling economy, Applicant relocated to another state in May 2012. (GE 1). While in transit, he was involved in a motorcycle accident and suffered injuries. (Tr. 69-70)

When Applicant could not find full-time employment in his relocated state, he moved to Australia to assist in a drug rehabilitation program for several months. (GE 1) When he returned in June 2013, he found full-time employment with his current employer as a computer systems analysis associate manager. (GE 1) He remains employed by this employer.

While unemployed or underemployed, Applicant accumulated a number of delinquent debts. His credit reports reveal a judgment obtained by creditor 1.a against Applicant in November 2011 for \$4,048 on an account opened in May 1999 and last reported in April 2010. (GEs 3 and 4; Tr. 30) Applicant was not notified of the pending suit and did not make an appearance in any of the scheduled hearings. (GE 2; Tr. 101-102) Creditor 1.a obtained an earnings withholding order in February 2014 and has since garnished Applicant's weekly earnings on a judgment amount due of \$5,767. (AE I) Since March 2014, creditor 1.a has collected a total of \$5,008 in earnings withholding from Applicant at the rate of \$253 a week. (AE I; Tr. 58-60)

Other delinquent debts accumulated by Applicant since 2010 include the following: Creditor 1.c (\$8,678); creditor 1.d (\$6,647) on an account that became delinquent in 2010; creditor 1.e (\$2,825); creditor 1.f (\$2,720); creditor 1.g (\$580); creditor 1.h (\$505); creditor 1.i (\$238); creditor 1.j (\$196); creditor 1.k (\$131); and creditor 1.l (\$2,300). (GEs 2-4) Applicant assured that the debt held by creditor 1.b is a duplicate of the debt reported for creditor 1.c. (GEs 2-4; Tr. 26) Applicant's assurances are corroborated by the compiled data in his credit reports, are not challenged by the Government, and are accepted.

Applicant attributes his debts to both the depressed national economy that affected his employment prospects and his forced relocation in 2012 in his attempts to find gainful full-time employment in his chosen field of expertise. Interviewed by an investigator from the Office of Personnel Management (OPM) in July 2013, Applicant detailed his full-time employment status in the interview. He committed to contacting the listed creditors in his credit report and addressing his outstanding debts. (GE 2) Between July 2013 and March 2014, Applicant devoted most of his available resources to satisfying a garnishment order obtained by creditor 1.a and repaying advances and loans made to him by family members and friends. (GEs 3 and 4; Tr. 49-54)

Once Applicant received the SOR, he contacted a debt settlement firm to assist him in addressing the debts listed in the SOR. (GEs 1-4) In April 2014, he completed a debt settlement agreement with the law firm that authorizes the law firm to contact and arrange settlements with his listed creditors. (AE A) Applicant scheduled debts in the program exceeding \$25,000 and covering creditors 1.c-1.h and 1.i. (AE A) Allocated attorneys fees were \$6,269. Payment terms in the agreement required Applicant to make monthly payments of \$403, beginning in May 2014. (AE A; Tr. 60) Since retaining this firm, Applicant has made three monthly payments for an aggregate total of around \$1,200 to date. (AE H; Tr. 60-61)

With his continued monthly payments to his debt settlement firm, Applicant hopes to pay off his acknowledged debts with creditors 1.c-1.h and 1.i by April 2015. (AE A; Tr. 54-55) Once the garnishment order is satisfied, Applicant will increase his monthly payments on his debt settlement initiative by an estimated \$200 a week. (Tr. 61-63)

Since receiving the SOR, Applicant has satisfied most of his creditor 1.a judgment debt through involuntary wage withholding. (AE G; Tr. 59-60) And he is credited with fully satisfying his debt with creditor 1.j. (AE F) However, Applicant has not made any documented headway in addressing his remaining debts with creditors 1.i and 1.k. (GE 2; Tr. 64-66) Together, these two medically-related debts approximate \$369.

Applicant committed to continue his efforts to locate and satisfy these two creditors. Contrary to Applicant's beliefs at the time, these debts were not covered by his motorcycle medical insurance. (Tr. 70-72) He will be adding to these two creditors to his debt settlement plan as soon as he and his retained law firm are able to locate them. (Tr. 68-69)

Applicant has since repaid the \$1,200 monetary advance made to him by his ex-wife. (Tr. 73) Additionally, he paid \$200 of the \$1,000 lent to him by his daughter and paid from \$200 to \$500 to friends who advanced him money to cover his living expenses while he was out of work. (Tr. 73-74) And he funded his daughter's \$2,000 honeymoon. (Tr. 75-76) Applicant's repayment claims are not documented, but are credible and are accepted.

Endorsements

Applicant provided positive performance evaluations for 2013 and 2014. (AEs B-D) His evaluations for both performance periods include high ratings, and he is credited with establishing “a productive working relationship with the government” (AE B). Applicant’s supervisor expressed complete confidence in the former’s judgment and leadership skills. (AEs B and C)

Applicant’s site manager characterized Applicant as an honest and responsible manager and employee and credited him with shaping his IT department into a competent department in a short period of time. (AE J) Applicant’s Air Force (AF) appointment in December 2013 as an information assurance officer (IAO) assigned to manage his unit’s network and computer security program is a worthy testament to the level of confidence placed in Applicant by the AF’s program oversight command. (AE D)

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.” 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 revised 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 to his recurrent underemployment and unemployment during difficult economic circumstances while located in another state. Since his obtaining full-time employment in July 2013, he has repaid most of the judgment taken against him in 2011 through involuntary garnishment proceedings and addressed his remaining debts. Applicant's delinquent debts were mostly consumer-related debts, but include several medical debts as well.

Applicant's debt accruals raise potential security concerns about his judgment, reliability, and trustworthiness in managing his personal finances. His 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."

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 extended income losses associated with his recurrent unemployment and underemployment problems reflect extenuating circumstances. Considered together, they entitle him to 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," to his case-specific situation.

Applicant received no financial counseling that would entitle him to any additional mitigation credit. His accepted good-faith dispute of his creditor 1.b debt on duplication grounds entitles him to application of 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."

By paying or resolving most of his listed creditors, individually or through an established payment plan, Applicant has established a promising track record for resolving his debts. MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," applies to Applicant's situation. His documented payoffs 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).

While Applicant's debt repayment plan is still in the early stages of performance, extenuating circumstances associated with his periods of unemployment and underemployment, judgment garnishment, and his prioritized repayments of advances from family members and friends provide adequate cover for his good-faith payment initiatives. So long, as he is able to establish a credible and realistic plan to resolve his financial problems, accompanied by significant actions to implement his plan, he meets the Appeal's Board requirements for stabilizing his finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008).

To date, Applicant has demonstrated considerable financial improvement in the management of his finances. His payment of one of the listed debts (i.e., creditor 1.k), near completion of the garnishment order covering a listed judgment creditor (i.e., creditor 1.a), successful dispute of another of his remaining three debts (i.e., creditor 1.b), and his stated expectations of meeting the monthly payment terms of the debt consolidation firm he has engaged reflect good-faith intentions and initiatives on Applicant's part. His collective actions satisfied a major component of the criteria established by the Appeal Board to gauge an applicant's payment initiatives. 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).

While two of Applicant's listed debts remain unpaid and unresolved, (i.e., creditors 1.i and 1.k), Applicant and his debt settlement counselors continue work on locating these creditors and adding them to the settlement plan's list of creditors. And it is settled practice that an applicant need not have paid every debt alleged in the SOR to restore his financial trustworthiness.

So long, as Applicant is able to establish a credible and realistic plan to resolve his financial problems, accompanied by significant actions to implement his plan, he meets the Appeal's Board requirements for stabilizing his finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008). This Applicant has demonstrated with his payment efforts to date, successful dispute of one of his listed creditors, and his expressed expectations of meeting the monthly payment terms of his debt settlement firm. Mitigation efforts necessary to meet Appeal Board requirements are met.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances associated with Applicant's extended unemployment and underemployment during recurrent periods of economic downturn. Applicant's repayment initiatives reflect good-faith measures to address his debts with the limited resources available to him.

Applicant's AF appointment and his employee performance evaluations reflect significant trust and confidence in his judgment and leadership skills. Applicant provided positive performance evaluations for 2013 and 2014. His evaluations for both

performance periods include high ratings, and he is credited with establishing a productive working relationship with the government. Applicant's site manager's endorsement of the former as a trustworthy, responsible manager and employee provides additional reinforcement of Applicant's reputation for good judgment, reliability and trustworthiness.

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 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): FOR APPLICANT

Subparas. 1.a through 1.l: 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

